

**LAWS AND RESOLUTIONS  
OF THE STATE OF MONTANA  
Volume II of III**

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# Table of Contents

## Volume I

- Officers and Members of the Montana Senate
- Officers and Members of the Montana House of Representatives
- Title Contents of Bills and Resolutions
- Chapters 1-288

## Volume II

- Chapters 289-502

## Volume III

- Chapters 503-576
- House Joint Resolutions
- House Resolutions
- Senate Joint Resolutions
- Senate Resolutions
- Tables
  - Code Sections Affected
  - Session Laws Affected
  - Senate Bill to Chapter Number
  - House Bill to Chapter Number
  - Chapter Number to Bill Number
  - Effective Dates By Chapter Number
  - Effective Dates By Date
  - Session Law to Code
  - 2020 Ballot Issues to Code
  - Code Sections to 2020 Ballot Issues
- Index to Appropriations
- General Index

## Volume II

Chapters 288-502 .....	945
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## CHAPTER NO. 289

[HB 669]

AN ACT GENERALLY REVISING THE MEMBERS OF THE STATE ELECTRICAL BOARD; PROVIDING AN APPROPRIATION; AMENDING SECTION 2-15-1764, 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 2-15-1764, MCA, is amended to read:

**“2-15-1764. State electrical board.** (1) There is a state electrical board.

(2) The board consists of five members appointed by the governor with the consent of the senate, who ~~shall~~ *must* be residents of this state. Two members of the board shall represent the public. Two members of the board ~~shall~~ *must* be licensed electricians. ~~One member shall be a master licensed electrical contractor~~ *One member must be a master licensed electrician or a licensed electrician who holds an unlimited electrical contractor license.*

(3) The members of the board shall serve for a term of 5 years with their terms of office so arranged so that one term expires on July 1 of each year.

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

**Section 2. Appropriation.** There is appropriated \$500 from the general fund to the state electrical board for the fiscal year ending June 30, 2022, to update the website and any written materials pertaining to the change in the board requirements.

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

**Section 4. Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, for all appointments to the board made on or after January 1, 2021.

Approved April 28, 2021

## CHAPTER NO. 290

[HB 167]

AN ACT ADOPTING THE BORN-ALIVE INFANT PROTECTION ACT; PROVIDING THAT INFANTS BORN ALIVE, INCLUDING INFANTS BORN ALIVE AFTER AN ABORTION, ARE LEGAL PERSONS; REQUIRING HEALTH CARE PROVIDERS TO TAKE NECESSARY ACTIONS TO PRESERVE THE LIFE OF A BORN-ALIVE INFANT; PROVIDING A PENALTY; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Short title.** [Sections 1 through 8] may be cited as the “Born-Alive Infant Protection Act”.

**Section 2. Findings – purpose.** (1) The state asserts a compelling interest in protecting the life of any infant born alive following an abortion.

(2) An infant born alive is a legal person for all purposes under the laws of the state and is entitled to the protections of the laws, including the right to appropriate and reasonable medical care and treatment.

(3) In the absence of proper legal protections, newly born infants who have survived abortions have been denied appropriate lifesaving or life-sustaining medical care and treatment and have been left to die.

**Section 3. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) “Abortion clinic” means any health care provider who performs any surgical abortion procedure or provides a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes the off-label use of drugs that are known to have abortion-inducing properties and are prescribed specifically with the intent of causing an abortion, such as misoprostol and methotrexate, but excludes drugs that may be known to cause an abortion but are prescribed for other medical indications.

(2) “Born alive” means the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after expulsion or extraction, breathes, has a beating heart, or has definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, induced abortion, or another method.

(3) “Health care provider” means an individual who may be asked to participate in any way in a health care service or procedure, including but not limited to a physician, physician’s assistant, nurse, nurse’s aide, medical assistant, hospital employee, medical facility employee, or abortion clinic employee.

(4) “Medical facility” means a public or private hospital, clinic, center, medical school, medical training institute, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location in which medical care or treatment is provided to any person.

**Section 4. Born-alive infant protection.** (1) A born-alive infant, including an infant born in the course of an abortion, must be treated as a legal person under the laws of the state, with the same rights to medically appropriate and reasonable care and treatment.

(2) A health care provider who is present at the time a born-alive infant is born shall take all medically appropriate and reasonable actions to preserve the life and health of the infant.

**Section 5. Criminal penalties.** (1) A health care provider who purposely, knowingly, or negligently violates [section 4] is guilty of a felony and upon conviction shall be fined an amount not to exceed \$50,000, be imprisoned in a state prison for a term not to exceed 20 years, or both.

(2) For the purposes of this section, “purposely”, “knowingly”, and “negligently” have the meanings provided in 45-2-101.

**Section 6. Mandatory reporting.** A health care provider, medical facility, abortion clinic, or employee or volunteer of a medical facility or abortion clinic that has knowledge of a failure to comply with the requirements of [section 4] shall immediately report the failure to law enforcement.

**Section 7. Construction.** [Sections 1 through 8] may not be construed as any indication that other state laws protecting children do not apply to infants born alive during an abortion.

**Section 8. Right of intervention.** The legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored [sections 1 through 8] in the member’s official capacity, to intervene as a

matter of right in any case in which the constitutionality of [sections 1 through 8] is challenged.

**Section 9. Codification instruction.** [Sections 1 through 8] are intended to be codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 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.** If approved by the electorate, [this act] is effective January 1, 2023.

**Section 12. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2022 by printing on the ballot the full title of [this act] and the following:

- YES on Legislative Referendum \_\_\_\_.
- NO on Legislative Referendum \_\_\_\_.

Approved April 29, 2021

## CHAPTER NO. 291

[HB 170]

AN ACT GENERALLY REVISING LAWS RELATED TO AND INCLUDING GREEN HYDROGEN; DEFINING TERMS; CREATING A NEW TAX CLASSIFICATION FOR GREEN HYDROGEN AND PROVIDING TAX INCENTIVES; EXEMPTING GREEN HYDROGEN FROM THE MAJOR FACILITY SITING ACT; REVISING THE STATE ENERGY POLICY TO INCLUDE GREEN HYDROGEN; REVISING THE USE OF ENERGY DEVELOPMENT AND DEMONSTRATION GRANTS FOR GREEN HYDROGEN; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, 15-24-1401, 75-20-104, 75-20-201, 90-4-1001, AND 90-4-1005, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Class eighteen property -- description -- taxable percentage.** (1) (a) Subject to subsection (1)(b), class eighteen property includes the land, improvements, furniture, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies, except those included in class five property under 15-6-135 of a green hydrogen facility, green hydrogen pipeline, or green hydrogen storage system.

(b) Power generation primary fuel sources must be at least 25% by volume derived from green hydrogen to qualify under this section.

(2) (a) "Green hydrogen" means hydrogen that is produced from nonfossil fuel feedstock sources and does not produce incremental greenhouse gas emissions during its production. The term does not include hydrogen produced using steam reforming or any other conversion technology that produces hydrogen from fossil fuel feedstock.

(b) "Green hydrogen facility" means the land, improvements, and personal property of a facility designed or modified:

- (i) to produce green hydrogen through electrolysis technology;
- (ii) to store or transport green hydrogen; or

(iii) to convert green hydrogen back to electricity through a hydrogen-capable power generation source with construction commencing after July 1, 2021.

(c) “Green hydrogen pipeline” means a pipeline used for the transport or storage of green hydrogen, with construction commencing after July 1, 2021.

(d) “Green hydrogen storage system” means the temporary storage of green hydrogen in a vessel, pipeline, or geologic formation.

(3) During construction, property not meeting the definitions in subsection (2) must be classified as class eighteen property if, prior to March 1 of the first tax year for which the classification will be applied, the taxpayer certifies to the department that the facility under construction will meet the definitions in subsection (2) within 2 years of the date of the certification.

(4) The taxable property of a green hydrogen facility, a green hydrogen pipeline, and a green hydrogen storage system must be locally assessed.

(5) Class eighteen property does not include a green hydrogen facility, pipeline, or storage system for which, during construction, the standard prevailing wages for heavy construction, as provided in 18-2-401(13)(a), were not paid during the construction phase.

(6) (a) Except as provided in subsections (6)(b) and (6)(c), class eighteen property is taxed at 3% of its market value.

(b) Class eighteen property defined in subsection (2) or meeting the requirements of subsection (3) is taxed at 1.5% of its market value for the first 15 years from the time construction commences.

(c) Class eighteen property defined in subsection (2) for which the owners have made an additional investment of \$25 million or more is taxed at 1.5% of market value for the first 15 years from the time construction commences on the additional investment.

**Section 2. Rules.** (1) The department of revenue shall adopt rules for the implementation of [sections 1 and 2], including:

(a) the valuation of property and administration of property classified under [section 1]; and

(b) rules necessary for certification and compliance with [section 1].

(2) The rules may include specifying procedures, including timeframes for application, and definitions necessary to identify property for compliance.

**Section 3.** 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)(c);

(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, biomass generation facilities, and energy storage facilities classified under 15-6-157, and property classified under [section 1].

(3) Class seven property is taxed at 8% of its market value.”

**Section 4.** 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;

(b) 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;

(c) rural electric cooperatives' property, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157 and property used for headquarters, office, shop, or other similar facilities, 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;

(d) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5); and

(e) 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; and

(ix) all property classified under [section 1].

(2) Class nine property is taxed at 12% of market value."

**Section 5.** 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)(h)(i), class thirteen property includes:

(a) electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage 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 42 U.S.C. 16451;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157, owned or operated by any electrical energy producer;

(d) allocations of centrally assessed telecommunications services companies; and

(e) dedicated communications infrastructure described in 15-6-162(5) for which construction commenced after June 30, 2027, or for which the 15-year period provided for in 15-6-162(5)(c) has expired.

- (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;
  - (g) generation facilities that are exempt under 15-6-225; and
  - (h) qualified data centers classified under 15-6-162; and
  - (i) *property classified under [section 1].*

(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 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 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;

(i) energy storage facilities of a centrally assessed electric power company;

(j) energy storage facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(k) noncentrally assessed energy storage facilities owned or operated by any electrical energy producer;

(l) energy storage facilities owned or operated by cooperative rural electrical associations described under 15-6-137;

(m) battery energy storage systems that comply with federal standards on the manufacture and installation of the systems that are owned and operated by an electrical energy storage producer, electrical energy producer, or energy trading entity or by the owner or operator of an electrical vehicle charging site;

(n) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(o) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(p) all property of a biomass gasification facility, as defined in 15-24-3102;

(q) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection (1)(t) of this section, that sequesters carbon dioxide;

(r) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(s) all property of a geothermal facility, as defined in 15-24-3102;

(t) 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);

(u) 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;

(v) all property of a natural gas combined cycle facility;

(w) 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;

(x) 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;

(y) 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;

(z) 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)(z) 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 18-2-414, 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) "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.

(b) (i) "Compressed air energy storage" means the conversion of electrical energy to compressed air by using an electrically powered turbocompressor for storage in vessels designed for that purpose and in the earth, including but not limited to deep saline formations, basalt formations, aquifers, depleted oil or gas reservoirs, abandoned mines, and mined rock cavities.

(ii) The term includes the conversion of compressed air into electrical energy by using turboexpander equipment and electrical generation equipment.

(c) (i) "Energy storage facilities" means hydroelectric pumped storage property, compressed air energy storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy storage facilities directly connected to the electrical power grid and associated property, appurtenant land and improvements, and personal property that are designed to:

(A) receive and store electrical energy as potential energy; and

(B) convert the stored energy into electrical energy for sale as an energy commodity or as electricity services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid, including but not limited to frequency regulation ancillary services and frequency control.

(ii) The term includes only property that in the aggregate can store at least 0.25 megawatt hour and has a power rating of at least 1 megawatt for a period of at least 0.25 hour.

(iii) The term does not include property, including associated property and appurtenant land and improvements, that is used to hold water in ponds, reservoirs, or impoundments related to hydroelectric pumped storage as defined in subsection (4)(e).

(d) "Flywheel storage" means a process that stores energy kinetically in the form of a rotating flywheel. Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel's integrated electric generator.

(e) “Hydroelectric pumped storage” means a process that converts electrical energy to potential energy by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through hydraulic turbines and generate electrical energy.

(f) (i) “Regenerative fuel cell” means a device that produces hydrogen and oxygen from electricity and water and alternately produces electrical energy and water from stored hydrogen and oxygen.

(ii) *The term does not include a green hydrogen facility, green hydrogen pipeline, or green hydrogen storage system as defined in [section 1].*

(g) “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)(x), (1)(y), or (1)(z), 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)(x), (1)(y), or (1)(z), 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 15-24-1401, MCA, is amended to read:

**“15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) “Expansion” means that the industry has added or will add at least \$50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) “Industry” includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry’s gross sales or receipts are earned from outside the state;

(e) earns 50% or more of its annual gross income from out-of-state sales;

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 15-6-225; or

(g) operates a qualified data center or dedicated communications infrastructure classified under 15-6-162; or

(h) *operates a green hydrogen facility, green hydrogen pipeline, or green hydrogen storage system as defined in [section 1].*

(3) “New” means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested or will invest at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) “Qualifying” means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section.”

**Section 8.** 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 (9)(a) or (9)(b), including upgrading to a design capacity covered by subsection (9)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) (a) “Commencement of acquisition of right-of-way” means the actual, defined legal transfer of property.

(b) The term does not mean preliminary discussions, option agreements that are not within 60 days of commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal transfer of property.

(8) “Department” means the department of environmental quality provided for in 2-15-3501.

(9) “Facility” means, subject to 75-20-1202:

(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 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 electric transmission lines that are collectively less than 150 miles in length and are required under state or federal regulations and laws, with respect to reliability of service, for an electrical generation facility, as defined in 15-24-3001(4), *or for a wind generation facility, biomass generation facility, or energy storage facility, as defined in 15-6-157, or for a green hydrogen facility or green hydrogen storage system, as defined in [section 1], to interconnect to a regional transmission grid or secure firm transmission service to use the grid for which the person planning to construct the line or lines 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 or centerlines;*

(iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or more to increase that line’s capacity, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (9)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the transmission network and protect electrical workers and the public.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(vi) does not include an energy storage facility, as defined in 15-6-157;

(vii) *does not include a green hydrogen facility or green hydrogen storage system, as defined in [section 1];*

(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; *or*

(C) *a green hydrogen pipeline, as defined in [section 1];*

(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 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant, except that the term does not include a compressed air energy storage facility, as defined in 15-6-157, or a green hydrogen facility or green hydrogen storage system, as defined in [section 1]; 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.

(10) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(11) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

(12) ~~"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. "Transmission reliability agencies" means the federal energy regulatory commission, the western electricity coordinating council, the national electric reliability council, and the midwest reliability organization.~~

(13) ~~"Transmission reliability agencies" means the federal energy regulatory commission, the western electricity coordinating council, the national electric reliability council, and the midwest reliability organization. "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.~~

(14) "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;
- (d) changing structure spacing, design, or guying; or
- (e) installing additional circuits.

(15) "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 9.** Section 75-20-201, MCA, is amended to read:

**"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility -- applicability to federal facilities.**

(1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(9) may petition the department to review the energy-related project under the provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-157, or a green hydrogen facility, a green hydrogen pipeline, or a green hydrogen storage system, as defined in [section 1], is not considered an energy-related project under the provisions of this chapter. A certificate for the construction or installation of an energy storage facility, or a green hydrogen facility, a green hydrogen pipeline, or a green hydrogen storage system, as defined in [section 1], is not required under this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

**Section 10.** Section 90-4-1001, MCA, is amended to read:

“**90-4-1001. State energy policy goal statements.** (1) It is the policy of the state of Montana to:

(a) promote energy efficiency, conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens;

(b) enhance existing energy development and create new diversified energy development from all of Montana’s abundant energy resources;

(c) promote development of projects using advanced technologies that convert coal into electricity, synthetic petroleum products, hydrogen, methane, natural gas, and chemical feedstocks;

(d) increase utilization of Montana’s vast coal reserves in an environmentally sound manner that includes the mitigation of greenhouse gas and other emissions;

(e) increase local oil and gas exploration and development to provide high-paying jobs and to strengthen Montana’s economy;

(f) expand exploration and technological innovation, including using carbon dioxide for enhanced oil recovery in declining oil fields to increase output;

(g) expand Montana’s petroleum refining industry as a significant contributor to Montana’s manufacturing sector in supplying the transportation energy needs of Montana and the region;

(h) develop biomass plants to generate heat for industrial use, electricity, or both, and as a means to manage Montana’s forests;

(i) promote the generation of low-cost electricity with large-scale utility wind generation and small-scale distributed generation;

(j) build new transmission lines in the state, while noting that the need for new transmission lines may be mitigated by focusing on energy efficiency, distributed energy, demand response, and smart grid technologies;

(k) increase the capacity of existing transmission lines in existing corridors and maximize the potential of existing transmission lines;

(l) develop new transmission lines, pipelines, and other energy infrastructure in Montana by working closely with all affected stakeholders, including local governments, in the preliminary stages of development;

(m) address the interests of property owners and property rights as soon as practicable when developing a project to provide time to consider a variety of options as easements are secured;

(n) ensure that the costs of transmission lines that allow for the export of Montana-generated electricity are borne by those who will benefit from the lines in order to protect Montana's ratepayers from the costs of serving others;

(o) strengthen Montana's level of participation in regional transmission efforts and organizations, recognizing that endeavors to improve the management of the transmission grid often require a broad, regional approach;

(p) use new and innovative technologies, such as compressed air energy storage, batteries, flywheels, hydrogen production, *green hydrogen facilities and green hydrogen storage systems as defined in [section 1]*, smart grid, smart garage, and intrahour balancing services to address ~~wind~~ integration of *wind and other forms of renewable energy*;

(q) utilize modeling and high-capacity computer technology to quantify the benefits of geographic diversity and for regional planning in the siting of future wind development facilities in order to optimize usable power generation and mitigate firming needs;

(r) review potential impacts to landscapes, wildlife, and existing land uses, including recreation and agriculture when developing wind generation;

(s) develop contracts between qualifying small power production facilities, as defined in 69-3-601, and utilities, which facilitate the development of small power production facilities by identifying fair and reasonable costs for integration of their power;

(t) monitor existing energy incentives to determine if they are cost-effective, noting that incentives are a temporary tool to implement and promote:

(i) new technologies;

(ii) new fuel sources;

(iii) efficiency and conservation; and

(iv) energy diversity;

(u) enhance Montana's overall management responsibilities, both fiduciary and multiple-use, pursuant to The Enabling Act of the state of Montana, Article X of the Montana constitution, and Title 7, chapter 1, in pursuing energy development on state lands;

(v) develop and use best management practices for energy development on state lands;

(w) develop and emphasize building performance standards for efficiency as an alternative to prescriptive standards in order to encourage innovations that may result in more comfort for the property owner and less energy use at a lower cost; and

(x) ensure that adequate amounts of the electrical energy produced at the lowest cost in this state are reserved for Montana's families, businesses, and industries.

(2) In pursuing these goal statements, it is the policy of the state of Montana to:

(a) consider that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets;

(b) develop Montana's existing and new, diversified energy resources to provide low-cost electricity, gas, and liquid fuels needed to drive economic growth and self sufficiency;

(c) reduce the nation's reliance on foreign oil that often comes from unfriendly countries around the world;

(d) consider reviewing these energy policy statements and any future changes pursuant to 90-4-1003 so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy;

(e) adopt a state transportation energy policy as provided in 90-4-1010 and an alternative fuels policy and implementing guidelines as provided in 90-4-1011; and

(f) consider revisions to the state transportation energy policy and the alternative fuels policy and implementing guidelines, if necessary."

**Section 11.** Section 90-4-1005, MCA, is amended to read:

**"90-4-1005. Energy development and demonstration grant program.** (1) There is an energy development and demonstration grant program within the department of environmental quality to fund technology development and demonstration:

(a) advancing the development and utilization of energy storage systems, including but not limited to mediums, such as accumulators, fuel cells, and batteries, and green hydrogen storage systems as defined in [section 1] that store energy that may be drawn upon at a later date for use;

(b) developing storage systems specifically designed to store energy generated from eligible renewable resources as defined in 69-3-2003, including but not limited to compressed air energy and green hydrogen storage systems;

(c) promoting the efficiency, environmental performance, and cost-competitiveness of energy storage systems beyond the current level of technology; and

(d) advancing the development of alternative energy systems as defined in 15-32-102 and green hydrogen facilities as defined in [section 1].

(2) Entities that may be eligible for grants include but are not limited to units of the Montana university system, agricultural research centers, or private entities or research centers.

(3) Money appropriated to the department of environmental quality for the purpose of the energy development and demonstration grant program may be used by the department for providing individual grants in amounts up to \$500,000 and for administrative costs of 1% of the grant award.

(4) The grant application may include:

(a) a project plan sufficient to allow a reasonable determination regarding the potential feasibility of advancing energy storage or alternative energy systems;

(b) a business plan to allow a reasonable determination regarding the financial feasibility of the project; and

(c) a reporting process to ensure progress toward project goals."

**Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 13. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 6, and the provisions of Title 15, chapter 6, apply to [sections 1 and 2].

**Section 14. 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 15. Effective date.** [This act] is effective on passage and approval.

**Section 16. Applicability.** [This act] applies to tax years beginning after December 31, 2021.

Approved April 28, 2021

## CHAPTER NO. 292

[HB 300]

AN ACT GENERALLY REVISING SCHOOL TRANSPORTATION LAWS; AUTHORIZING THE USE OF 8-PASSENGER TO 15-PASSENGER VEHICLES FOR TRANSPORTATION OF STUDENTS TO AND FROM CERTAIN EVENTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Transportation for special activities.** (1) For purposes of this section, “passenger vehicle” means a motor vehicle that is:

(a) designed to transport 8 to 15 passengers and is the size and style of vehicle necessary to meet the needs of the district; and

(b) insured in accordance with the minimum coverage requirements established in 20-10-109.

(2) A district may use a passenger vehicle to transport students to or from school-sponsored functions or activities. A district may not use a passenger vehicle for purposes of transporting students to or from school on a regular bus route.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 10, part 1, and the provisions of Title 20, chapter 10, part 1, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2021.

Approved April 28, 2021

## CHAPTER NO. 293

[HB 331]

AN ACT REQUIRING ADULT AND YOUTH CORRECTIONAL FACILITIES AND PROGRAMS TO GRANT ACCESS TO A LEGISLATOR; REQUIRING CONTRACTS WITH CORRECTIONAL FACILITIES AND PROGRAMS TO SPECIFY A LEGISLATOR MAY ACCESS THE FACILITY OR PROGRAM AT ALL TIMES WITH AN EXCEPTION FOR SECURITY ISSUES; AND AMENDING SECTIONS 50-46-302 AND 53-1-202, MCA.

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

**Section 1.** Section 50-46-302, MCA, is amended to read:

“**50-46-302. Definitions.** As used in this part, the following definitions apply:

(1) "Canopy" means the total amount of square footage dedicated to live plant production at a registered premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(2) "Chemical manufacturing" means the production of marijuana concentrate.

(3) "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or (3) and to which an individual may be ordered by any court of competent jurisdiction.

(4) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) posttraumatic stress disorder.

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

(6) "Dispensary" means a registered premises from which a provider or marijuana-infused products provider is approved by the department to dispense marijuana or marijuana-infused products to a registered cardholder.

(7) (a) "Employee" means an individual employed to do something for the benefit of an employer.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(c) The term does not include a third party with whom a licensee has a contractual relationship.

(8) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly through a business, an investment, or a spouse, parent, or child relationship, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(9) "Local government" means a county, a consolidated government, or an incorporated city or town.

(10) "Marijuana" has the meaning provided in 50-32-101.

(11) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

(12) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, and byproducts of the marijuana plant, including but not limited to marijuana concentrates and marijuana-infused products.

(13) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

(b) The term includes but is not limited to edible products, ointments, and tinctures.

(14) (a) “Marijuana-infused products provider” means a person licensed by the department to manufacture and provide marijuana-infused products for a registered cardholder.

(b) The term does not include the cardholder’s treating or referral physician.

(15) “Mature marijuana plant” means a harvestable female marijuana plant that is flowering.

(16) “Paraphernalia” has the meaning provided in 45-10-101.

(17) “Person” means an individual, partnership, association, company, corporation, limited liability company, or organization.

(18) (a) “Provider” means a person licensed by the department to assist a registered cardholder as allowed under this part.

(b) The term does not include a cardholder’s treating physician or referral physician.

(19) “Referral physician” means an individual who:

(a) is licensed under Title 37, chapter 3; and

(b) is the physician to whom a patient’s treating physician has referred the patient for physical examination and medical assessment.

(20) “Registered cardholder” or “cardholder” means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(21) “Registered premises” means the location at which a provider or marijuana-infused products provider:

(a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for registered cardholders; or

(b) has established a dispensary for sale of marijuana or marijuana-infused products to registered cardholders.

(22) “Registry identification card” means a document issued by the department pursuant to 50-46-303 that identifies an individual as a registered cardholder.

(23) (a) “Resident” means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this part if the individual:

(i) claims residence in another state or country for any purpose; or

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

(24) “Second degree of kinship by blood or marriage” means a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, stepgrandparent, or stepgrandchild.

(25) “Seedling” means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(26) “Standard of care” means, at a minimum, the following activities when undertaken in person or through the use of telemedicine by a patient’s treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

(a) obtaining the patient’s medical history;

(b) performing a relevant and necessary physical examination;

(c) reviewing prior treatment and treatment response for the debilitating medical condition;

(d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating medical condition;

(e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;

(f) monitoring the response to treatment and possible adverse effects; and

(g) creating and maintaining patient records that remain with the physician.

(27) "State laboratory" means the laboratory operated by the department to conduct environmental analyses.

(28) "Telemedicine" has the meaning provided in 33-22-138.

(29) "Testing laboratory" means a qualified person, licensed by the department, who meets the requirements of 50-46-311 and:

(a) provides testing of representative samples of marijuana and marijuana-infused products; and

(b) provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a sample.

(30) "Treating physician" means an individual who:

(a) is licensed under Title 37, chapter 3; and

(b) has a bona fide professional relationship with the individual applying to be a registered cardholder.

(31) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any marijuana derivatives that are appropriate for the use of marijuana by an individual with a debilitating medical condition.

(b) The term does not include the seeds, stalks, and roots of the plant.

(32) "Written certification" means a statement signed by a treating physician or referral physician that meets the requirements of 50-46-310 and is provided in a manner that meets the standard of care."

**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 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.

(5) (a) *A legislator must be admitted into the following correctional facilities or programs at any time subject to any immediate safety or security needs of the correctional facility or program:*

(i) *a facility listed in 53-30-101(3);*

(ii) *a prerelease center operated by or under a contract with the department of corrections;*

(iii) *a facility or program listed in subsection (3); and*

(iv) *a facility contracting with the department of corrections pursuant to chapter 30, part 3, of this title.*

(b) *A legislator seeking access to a correctional facility or program listed in subsection (5)(a) is subject to the routine security inspection procedures of the facility or program.*

(c) *A department of corrections contract with a correctional facility or program listed in subsection (2) or (3) must specify that the correctional facility or program shall grant access to a legislator pursuant to this subsection (5).*

(d) *If a legislator is denied entrance under subsection (5)(a), the facility or program must enumerate why access was denied and provide a reasonable estimate of when access will be granted.”*

Approved April 28, 2021

## CHAPTER NO. 294

[HB 334]

AN ACT REVISING LAWS RELATED TO THE MEDICAL EXEMPTION TO STUDENT IMMUNIZATION REQUIREMENTS; REVISING REQUIREMENTS FOR IMMUNIZATION FORMS; ESTABLISHING LIMITATIONS ON EXAMINATION AND USE OF IMMUNIZATION RECORDS; AMENDING SECTIONS 20-5-403, 20-5-405, 20-5-406, AND 20-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 20-5-403, MCA, is amended to read:

**“20-5-403. Immunization required – release and acceptance of immunization records.** (1) The governing authority of any school other than a postsecondary school may not allow a person to attend as a pupil unless the person:

(a) has been immunized against varicella, diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department;

(b) has been immunized against Haemophilus influenza type “b” before enrolling in a preschool if under 5 years of age;

(c) qualifies for conditional attendance; or

(d) files for an exemption *as provided in 20-5-405.*

(2) (a) The governing authority of a postsecondary school may not allow a person to attend as a pupil unless the person:

(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or

(ii) files for an exemption *as provided in 20-5-405.*

(b) The governing authority of a postsecondary school may, *as a condition of attendance*, impose immunization requirements ~~as a condition of attendance~~ that are more stringent than those required by this part, *subject to the exemptions provided for in 20-5-405.*

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall retain a certified copy for the permanent record and send the original immunization records for the pupil to the school district to which the pupil transfers.”

**Section 2.** Section 20-5-405, MCA, is amended to read:

**“20-5-405. Medical or religious exemption Exemptions – limitations on agency actions.** (1) ~~(a) There is a religious exemption to the immunizations required under 20-5-403. When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each school year; A person enrolled or seeking to enroll in school may attend the school without obtaining the immunizations if the person files with the governing authority a notarized affidavit on a form prescribed by the department stating that immunization is contrary to the religious tenets and practices of the signer; immunization of the person seeking to attend the school may not be required prior to attendance at the school.~~

(b) *The statement must be signed:*

(i) *by the person enrolled or seeking to enroll in the school, if the person is an adult; or*

(ii) *if the person is a minor, by a parent, guardian, or adult who has the responsibility for the care and custody of the minor.*

(c) *The statement must be maintained as part of the person’s immunization records.*

(d) *A person who falsely claims a religious exemption is subject to the penalty for false swearing as provided in 45-7-202.*

(2) ~~(a) There is a medical exemption to the immunizations required under 20-5-403. When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, files with the governing authority A person enrolled or seeking to enroll in school may attend the school without obtaining the immunizations if a written medical exemption statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada a health care provider specified in subsection (2)(c) is filed with the governing authority. stating The medical exemption statement must:~~

(i) *attest that the physical condition of the person enrolled or seeking to attend enroll in school or the medical circumstances relating to the person indicate that some or all of the required immunizations are not considered safe; and*

(ii) ~~indicating indicate~~ *the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization;*

(b) ~~the~~ *The person is exempt from the requirements of this part to the extent indicated by the physician’s medical exemption statement.*

(c) *The medical exemption statement must be signed by a person who:*

(i) *is licensed, certified, or otherwise authorized by the laws of any state or Canada to provide health care as defined in 50-16-504;*

(ii) *is authorized within the person’s scope of practice to administer the immunizations to which the exemption applies; and*

(iii) *has previously provided health care to the person seeking the exemption or has administered an immunization to which the person seeking an exemption has had an adverse reaction.*

(d) *The medical exemption statement must be maintained as part of the person's immunization records and may not be photocopied or otherwise duplicated for use by a third party without permission of the student's parent or, if the student is an adult, the written consent of the student.*

(3) (a) *The department may not require a medical exemption form that imposes requirements that are more burdensome or otherwise in excess of the requirements described in this section. A form prescribed by the department that contains requirements not expressly described in this section is void to the extent that it purports to impose requirements not included in this section.*

(b) *A governing authority may not deny a medical exemption on the basis that a person has not completed portions of the medical exemption form that are void under this subsection (3).*

(c) *The department is not authorized to review a completed medical exemption statement or medical exemption form for the purpose of granting or denying a medical exemption.*

~~(3)~~(4) *Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to the disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease."*

**Section 3.** Section 20-5-406, MCA, is amended to read:

**"20-5-406. Immunization record.** The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in 20-5-403 and shall record the immunization *status, including any exemptions*, of each pupil as part of the pupil's permanent school record ~~on a form prescribed by the department."~~

**Section 4.** Section 20-5-408, MCA, is amended to read:

**"20-5-408. Enforcement.** (1) The governing authority of any school other than a postsecondary school shall prohibit from further attendance any pupil allowed to attend conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) ~~Each~~ *The governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department; conform with the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99.*

~~(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school.~~

(3) *A student's health records, including information related to immunizations received and immunization exemptions, are considered part of the student's education record and are protected from disclosure as provided in the Family Educational Rights and Privacy Act of 1974."*

**Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 6. Effective date.** [This act] is effective July 1, 2021.

Approved April 28, 2021

## CHAPTER NO. 295

[HB 391]

AN ACT REVISING LAWS RELATED TO THE DISTRIBUTION OF DANGEROUS DRUGS; PROVIDING A PENALTY FOR CRIMINAL DISTRIBUTION WHEN A PERSON IS KILLED BY THE DANGEROUS DRUG THAT WAS DISTRIBUTED; AND AMENDING SECTION 45-9-101, MCA.

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

**Section 1.** Section 45-9-101, MCA, is amended to read:

**“45-9-101. Criminal distribution of dangerous drugs.** (1) Except as provided in Title 16, chapter 12, or Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of dangerous drugs involving giving away or sharing any dangerous drug, as defined in 50-32-101, shall be sentenced as provided in 45-9-102.

(3) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (1), (2), or (4), or (5) shall be imprisoned in the state prison for a term not to exceed 25 years or be fined an amount of not more than \$50,000, or both.

(4) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) For a first offense, the person shall be imprisoned in the state prison for a term not to exceed 40 years and may be fined not more than \$50,000.

(b) For a second or subsequent offense, the person shall be imprisoned in the state prison for a term not to exceed life and may be fined not more than \$50,000.

(5) *If the offense charged results in the death of an individual from the use of any dangerous drug that was distributed, the person shall be imprisoned in the state prison for a term of not more than 100 years and may be fined not more than \$100,000.*

(5)(6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.”

Approved April 28, 2021

## CHAPTER NO. 296

[HB 586]

AN ACT REVISING MOTOR VEHICLE TITLE LAWS WHEN THE OWNER DOES NOT HAVE THE CERTIFICATE OF TITLE; REVISING WHICH APPLICATIONS FOR TITLE MUST INCLUDE A BOND; AMENDING SECTION 61-3-208, MCA; AND PROVIDING AN 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 *that is 30 years old or older* or with a value of ~~\$500~~ *\$1,000* 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 *based on the vehicle condition* 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 by providing the bill of sale and a notarized document from the applicant attesting to the value.~~

(iii) If application is being made for a motor vehicle, trailer, semitrailer, or pole trailer *that is less than 30 years old* with a value that exceeds ~~\$500~~ *\$1,000*, 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 vehicle condition as determined by~~ 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 applicant shall certify the value of the motor vehicle, trailer, semitrailer, or pole trailer by providing the bill of sale and a notarized document from the applicant attesting to the value.* 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 July 1, 2021.

Approved April 28, 2021

## CHAPTER NO. 297

[SB 157]

AN ACT REVISING LAWS RELATED TO THE ABILITY OF A STUDENT ATTENDING A NONPUBLIC SCHOOL OR HOME SCHOOL TO PARTICIPATE IN EXTRACURRICULAR ACTIVITIES OFFERED BY THE STUDENT'S RESIDENT SCHOOL DISTRICT; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Participation in extracurricular activities.** (1) A school district or an athletic association, conference, or organization with authority over interscholastic sports may not prohibit or restrict the ability of a student attending a nonpublic or home school meeting the requirements of 20-5-109 from participating in extracurricular activities at a school in the student's resident school district solely on the student's enrollment at the public school or on the number of hours the student physically attends the public school.

(2) Except as provided in subsections (1) and (3), a student attending a nonpublic or home school who participates in extracurricular activities at a public school is subject to:

(a) the same standards for participation as those required of full-time students enrolled in the school;

(b) the same rules of any interscholastic organization of which the school of participation is a member.

(3) (a) The academic eligibility for extracurricular participation for a student attending a nonpublic school must be attested by the head administrator of the nonpublic school.

(b) The academic eligibility for extracurricular participation for a student attending a home school must be attested in writing by the educator providing the student instruction with verification by the school principal. The verification may not include any form of student assessment.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 5, part 1, and the provisions of Title 20, chapter 5, part 1, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2021.

Approved April 28, 2021

## CHAPTER NO. 298

[SB 163]

AN ACT REVISING THE NUMBER OF MEMBERS FOR THE BOARD OF WATER WELL CONTRACTORS; REVISING BOARD MEMBERSHIP QUALIFICATIONS; AND AMENDING SECTION 2-15-3307, MCA.

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

**Section 1.** Section 2-15-3307, MCA, is amended to read:

**“2-15-3307. Board of water well contractors.** (1) There is a board of water well contractors.

(2) The board is composed of ~~five~~ *seven* voting members, consisting of:

(a) one technical adviser who is a hydrogeologist appointed by the Montana bureau of mines and geology;

(b) ~~two~~ *four* licensed Montana water well contractors appointed by the governor with the concurrence of the senate, *with preference given to contractors from diverse geographical areas of the state;*

(c) one member appointed by the director of environmental quality; and

(d) one member appointed by the director of natural resources and conservation.

(3) The members of the board must have been bona fide residents of this state for a period of a least 3 years prior to such appointment.

(4) The members of the board shall serve for terms of 3 years. In case of a vacancy in the office of a member of the board, an appointment must be made to fill the vacancy in the manner prescribed by the constitution and laws of this state.

(5) The members of the board shall, upon entering on the duties of their office, take and subscribe to the oath specified in the constitution of Montana, and the oath must be filed in the office of the secretary of state.

(6) The board is allocated to the department of natural resources and conservation for administrative purposes only as prescribed in 2-15-121.

(7) *A member of the board may not be a close relative to another member of the board.*

(8) *A member of the board may not be employed by the same firm, corporation, partnership, or other business entity as another member of the board.*

(9) *For the purposes of this section, “close relative” means a parent, child, sibling, or spouse or a relative of the same degree through marriage.”*

Approved April 28, 2021

## CHAPTER NO. 299

[SB 166]

AN ACT GENERALLY REVISING LAWS RELATED TO ADDICTION COUNSELORS; REVISING LICENSURE REQUIREMENTS AND EDUCATION REQUIREMENTS FOR ADDICTION COUNSELORS; REVISING REGISTRATION REQUIREMENTS FOR ADDICTION COUNSELOR LICENSURE CANDIDATES; ALLOWING CRIMINAL BACKGROUND CHECKS FOR ADDICTION COUNSELOR LICENSE APPLICANTS; AND AMENDING SECTION 37-35-202, MCA.

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

**Section 1.** Section 37-35-202, MCA, is amended to read:

**“37-35-202. Licensure and registration requirements – examination – fees – fingerprint check.** (1) To be eligible for licensure as a licensed addiction counselor, the applicant shall submit an application fee in an amount established by the board by rule and a written application on a form provided by the board that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by board rule.

(2) ~~A person may apply for licensure as a licensed addiction counselor if the person has~~ *An applicant must meet the following degree requirements:*

(a) ~~received a a minimum of a baccalaureate or advanced degree from an accredited college or university in one of the following areas: in~~

(i) alcohol and drug studies;;

(ii) psychology;;

(iii) sociology;;

(iv) social work;; ~~or~~

(v) ~~counseling, or a comparable degree from an accredited college or university; or;~~

(vi) *human services;*

(vii) *psychiatric rehabilitation; or*

(viii) *community health;*

(b) ~~received a minimum of an associate of arts degree or certificate from an accredited institution in one of the following areas:~~

(i) alcohol and drug studies;;

(ii) addiction;; or

(iii) ~~substance abuse from an accredited institution.~~ *substance abuse; or*

(c) *a minimum of a baccalaureate or advanced degree from an accredited college or university in any area. Either as part of that degree or taken as courses outside the degree from an accredited college or university, the applicant must have the following:*

(i) *six semester credits in human behavior, sociology, psychology, or a similar emphasis;*

(ii) *three semester credits in psychopathology or course work exploring patterns and courses of abnormal or deviant behavior; and*

(iii) *six semester credits in counseling. Three of these six credits must be in group counseling and three must be in the theory of counseling.*

(3) Prior to becoming eligible to begin the examination process, each ~~person~~ *applicant* shall complete supervised work experience in:

(a) an addiction treatment program as defined by the board; ~~in;~~

(b) a program approved by the board, ~~or in;~~ or

(c) a similar program recognized under the laws of another state.

(4) Each applicant for licensure as a licensed addiction counselor shall successfully complete a competency examination, in writing only, as defined by rules adopted by the board ~~pass a written examination prescribed by the board.~~

(5) ~~(a) Except as provided in subsections (5)(d) and (6), an applicant who has completed the requirements of subsection (2) but has not completed the required supervised work experience may apply for registration as an addiction counselor licensure candidate (a) A person who has completed the education required for licensure but who has not completed the supervised work experience required for licensure shall register as an addiction counselor licensure candidate in order to engage in addiction counseling and earn supervised work experience hours in this state.~~

~~(b) An application for registration as an addiction counselor licensure candidate must be approved if it is determined that:~~

~~(i) a complete application approved by the board has been submitted;~~

~~(ii) there is no legal or disciplinary action against the applicant in this or any other state;~~

~~(iii) the applicant for registration as an addiction counselor licensure candidate 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).~~

~~(e)(b) A person registered as an addiction counselor licensure candidate shall register annually until the person becomes a licensed addiction counselor. The board may limit the number of years that a person may act as an addiction counselor licensure candidate.~~

~~(d)(c) A student is not required to register as an addiction counselor licensure candidate.~~

~~(6) The provisions of subsection (5) do not apply until the board 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.~~

~~(7)(6) (a) As a prerequisite to the issuance of a license as an addiction counselor and registration as an addiction counselor licensure candidate, the board shall require an applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307. The board may require a criminal background check of applicants and determine the suitability for licensure as provided in 37-1-201 through 37-1-205 and 37-1-307.~~

~~(b) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust and if the board determines that the applicant is not, the license may be denied.~~

~~(8)(7) A person holding a license to practice as a licensed addiction counselor in this state may use the title "licensed addiction counselor".~~

~~(9) 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."

Approved April 28, 2021

## CHAPTER NO. 300

[SB 201]

AN ACT PROHIBITING ADDERS IN AVOIDED COST RATE MAKING; AMENDING SECTIONS 69-3-604 AND 69-3-1206, 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 69-3-604, MCA, is amended to read:

**"69-3-604. (Temporary) Standards for determination of rates and conditions.** (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through ~~(5)~~ (6).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility must be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility must be established with consideration of the availability and reliability of the electricity produced.

(4) The commission shall set these rates using the avoided cost over the term of the contract.

(5) *Avoided cost rates may not include a bonus or adder to provide additional compensation for environmental externalities or other costs above avoided costs, except when a bonus or adder is necessary to compensate for a real and actual cost required by existing regulation or existing law.*

~~(5)~~(6) The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards. (Repealed on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003--see part compiler's comment.)"

**Section 2.** Section 69-3-1206, MCA, is amended to read:

**"69-3-1206. Rate treatment.** (1) The commission may include in a public utility's rates:

- (a) the cost of resources acquired in accordance with a plan;
- (b) demand-side management programs established and implemented in accordance with 69-3-1209;
- (c) the cost-effective expenditures for improving the efficiency with which the public utility provides and its customers use utility services;
- (d) the costs of complying with the planning requirements of this part; and
- (e) the costs of complying with a competitive solicitation process conducted in accordance with 69-3-1207.

(2) The commission may adopt rules establishing criteria governing the extent of recovery of abandonment costs.

(3) *The commission may not approve a bonus or adder in the cost of a new resource acquired after [the effective date of this act] to provide additional compensation for costs such as environmental externalities unless the bonus or adder is necessary to compensate for a real and actual cost required by existing regulation or existing law."*

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

**Section 4. Applicability.** [This act] does not apply to applications pending before the commission on or before [the effective date of this act].

Approved April 28, 2021

## CHAPTER NO. 301

[SB 223]

AN ACT REVISING FIREARMS LAWS; CREATING A PROCESS FOR QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS TO MAINTAIN THEIR FIREARMS QUALIFICATION AND MAINTAIN THEIR ABILITY TO CARRY CONCEALED AFTER RETIREMENT AS IF THEY WERE ACTIVE PEACE OFFICERS.

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

**Section 1. Firearms certificates for qualified retired law enforcement officers.** (1) The purpose of this section is to establish a process for issuing proof of firearms qualifications to a resident of the state who is otherwise a qualified retired law enforcement officer as defined in 7-32-201, or a peace officer as defined in 46-1-202, under the Federal Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926B and 926C, for the purpose of satisfying the qualification requirements contained in that act.

(2) A retired law enforcement officer or peace officer satisfies the federal certification requirements if they possess a valid firearms qualification certificate that:

(a) uses a current target from any law enforcement agency in the state that may be used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active-duty officers within the state that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within the state to have met the requirements under the Federal Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926B and 926C;

(b) provides that either a law enforcement agency as defined in 7-32-201 or an individual or entity certified to provide firearms training as provided in 37-60-101 acknowledges that the bearer has been found qualified or otherwise found to meet the standards established by the firearms qualification for the peace officer basic course at the Montana law enforcement academy; and

(c) complies with the time restrictions provided under subsection (3).

(3) The firearms certification is valid for a period of 1 year from the date that the law enforcement agency or individual or entity verified that the firearms qualification standards were met by the bearer on an equivalency course of fire established by any law enforcement agency in the state as an appropriate standard duty qualification course as it would relate to qualified retired officers. The date of the successful qualification must be on the certification card.

(4) The retired law enforcement officer or peace officer is responsible for paying the costs of the firearms qualification required under subsection (2).

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 44, and the provisions of Title 44 apply to [section 1].

Approved April 28, 2021

## CHAPTER NO. 302

[SB 238]

AN ACT GENERALLY REVISING LAWS RELATED TO COMPENSATION FOR SHERIFFS, UNDERSHERIFFS, AND DEPUTY SHERIFFS; ALLOWING THE BOARD OF COUNTY COMMISSIONERS TO PROVIDE ADDITIONAL SALARY TO SHERIFFS; REVISING THE METHOD USED TO CALCULATE LONGEVITY PAYMENTS FOR ALL TYPES OF SHERIFFS; INCREASING THE PERCENTAGE OF THE SHERIFF'S SALARY THAT IS USED TO CALCULATE THE SALARY FOR UNDERSHERIFFS AND DEPUTY SHERIFFS; AND AMENDING SECTIONS 7-4-2503, 7-4-2508, AND 7-4-2510, 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, county coroner, and county auditor in all counties 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. *The additional salary provided in this subsection (2)(b) must be included as salary for the purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.*

(c) *In addition to the salary provided for in subsections (1) and (2)(b), the county sheriff may receive any additional salary as determined by the board of county commissioners. The additional salary provided in this subsection (2)(c) must be included as salary for the purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.*

(e)(d) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under ~~subsection (1)~~ subsections (1) and (2)(b) 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 payment, nonpayment, increase, lack of increase, or decrease of the discretionary salary under subsection (2)(c) has no impact on the longevity payment.* 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)(e) 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)~~ (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(e)(f) The county treasurer, clerk of district court, and justice of the peace may each 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)~~ (2)(f) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(f)(g) The county coroner may be a part-time position, and the salary may be set accordingly.

(g)(h) The justice of the peace for a justice's court of record may receive, in addition to the base salary provided in subsection (1)(a), compensation up to an amount allowed by 3-10-207.

(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 longevity salary increase of \$500 or a greater amount based on the schedule developed and recommended by the county compensation board as provided in subsection (4). Any additional annual longevity salary increase provided for in this section after the 11th year of service may not exceed the amount provided in the schedule developed and recommended by the county compensation board.

(ii) The years of service accumulated after the 11th year of service as a deputy county attorney prior to July 1, 2015, may not be included in the calculation of the longevity increases by the county compensation board under this section.

(iii) 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) 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; 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 subsection (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.

(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.

(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.

(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.”

**Section 2.** Section 7-4-2508, MCA, is amended to read:

**“7-4-2508. Compensation of undersheriff and deputy sheriff – definitions.** (1) The sheriff shall fix the compensation of the undersheriff at ~~95%~~ **98%** of the salary of that sheriff.

(2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:

In counties with population of:

Below 15,000	85% to <del>90%</del> <b>95%</b>
15,000 to 29,999	76% to <del>90%</del> <b>95%</b>
30,000 to 74,999	74% to <del>90%</del> <b>95%</b>
75,000 and over	72% to <del>90%</del> <b>95%</b>

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (2)(a) according to a rank structure in the office.

(3) For purposes of this section, the ~~term~~ *following definitions apply:*

(a) ~~“compensation”~~ *“Compensation” means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.*

(b) *“Salary of that sheriff” means the total salary provided for in 7-4-2503(1), (2)(b), and (2)(c).”*

**Section 3.** Section 7-4-2510, MCA, is amended to read:

**“7-4-2510. Sheriff’s office – longevity payments.** Beginning on the date of the deputy sheriff’s or undersheriff’s first anniversary of employment with the office and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the office, ~~but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases.~~ This payment must be made in equal monthly installments. *The payment, nonpayment, increase, lack of increase, or decrease of the discretionary salary under 7-4-2503(2)(c) has no impact on the longevity payment.”*

Approved April 28, 2021

## CHAPTER NO. 303

[SB 283]

AN ACT GENERALLY REVISING LAWS REGARDING FIREARMS ON SCHOOL GROUNDS; CLARIFYING WHAT MODIFYING THE REQUIREMENT FOR EXPULSION MEANS; CLARIFYING WHAT CONSTITUTES A VIOLATION; REQUIRING SCHOOL OFFICIALS TO PROVIDE NOTICE OF CERTAIN RIGHTS; REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO MAKE CERTAIN INFORMATION PUBLIC; AND AMENDING SECTION 20-5-202, MCA.

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

**Section 1.** Section 20-5-202, MCA, is amended to read:

**“20-5-202. Suspension and expulsion.** (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in the suspension of a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is any removal of a pupil for more than 20 school days without the provision of educational services and is a disciplinary action available only to the trustees. A pupil may be suspended from school for an initial period not to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process, a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an informal hearing with the school administrator prior to the additional suspension and if the decision to impose the additional suspension does not violate the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(2) (a) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, ~~as defined in 18 U.S.C. 921,~~ to school *or to have possessed a firearm at school* and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school *or to have possessed a firearm at school* under this subsection (2)(a) must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration *in writing* to ~~modify the requirement for~~ *modify the requirement for* expulsion of a student, *up to and including eliminating the requirement for expulsion*, on a case-by-case basis. The trustees shall annually review the district's weapons policy and any policy adopted under this subsection (2)(a) and update the policies as determined necessary by the trustees based on changing circumstances pertaining to school safety.

(b) A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal ~~shall suspend immediately for good cause a student who is determined to have brought a firearm to school~~ *may immediately suspend a student if, prior to a hearing conducted pursuant to subsection (6), there is cause to believe the student brought a firearm to school or possessed a firearm at school.*

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a student to bring a firearm ~~to be brought~~ to school for instructional activities sanctioned by the district *if:*

(i) the district has appropriate safeguards in place to ensure student safety; and

(ii) the firearm is secured in a locked container approved by the school district when the firearm is at school and is not in use for the instructional activity; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting.

(5) Before holding a hearing as required under subsection (6) to determine if a student has violated this section, the trustees shall, in a clear and timely manner, notify the student if the student is an adult or notify the parent or guardian of a student if the student is a minor that the student may:

(a) waive the student's privacy interest by requesting that the hearing be held in public; and

(b) invite other individuals to attend the hearing.

(6) Before expelling a student under this section, the trustees shall hold a due process hearing that includes presentation of a summary of the information leading to the allegations and an opportunity for the student to respond to the allegations. The student may not be expelled unless the trustees find that the student knowingly, as defined in 1-1-204, brought a firearm to school or possessed a firearm at school.

(7) When a student subject to a hearing is found to have not violated this section, the student's school record must be expunged of the incident.

(8) The office of public instruction shall make available on its website the information gathered from school districts that is provided annually to the federal government under the reporting requirements of 20 U.S.C. 7151, provided that any personally identifiable information is redacted.

(9) The provisions of this section do not require expulsion of a student who has brought a firearm to school or possesses a firearm at school as long as the firearm is secured in a locked container approved by the school district or in a locked motor vehicle the entire time the firearm is at school, except while the firearm is in use for a school-sanctioned instructional activity.

(10) For the purposes of this section, the following definitions apply:

(a) "Firearm" has the same meaning as provided in 18 U.S.C. 921.

(b) (i) "School" means a building, grounds, or property of a public elementary or secondary school.

(ii) The term does not include a student's home, a locked vehicle, a parking lot, or a commercial business when the student is participating in an online, remote, or distance-learning setting."

Approved April 28, 2021

## CHAPTER NO. 304

[SB 286]

AN ACT PROHIBITING EASEMENTS IN A PLATTED SUBDIVISION THAT CROSS EXISTING LOTS OR PARCELS IF ROAD ACCESS CURRENTLY EXISTS.

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

**Section 1. Prohibited easement.** If an existing road or road easement provides access to a lot in a platted residential subdivision, the owner of a lot or parcel in a platted residential subdivision may not obtain a prescriptive easement for ingress or egress to the lot if the prescriptive easement crosses other lots or parcels in the platted residential subdivision.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 17, part 1, and the provisions of Title 70, chapter 17, part 1, apply to [section 1].

Approved April 28, 2021

## CHAPTER NO. 305

[SB 307]

AN ACT REVISING LAWS RELATED TO THE SAFETY OF IRRIGATION STRUCTURES AND FACILITIES; REVISING LIMITS OF LIABILITY FOR OWNERS OR OPERATORS OF IRRIGATION STRUCTURES AND FACILITIES; LIMITING GOVERNMENTAL LIABILITY; AND AMENDING SECTIONS 85-7-2211 AND 85-7-2212, MCA.

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

**Section 1.** Section 85-7-2211, MCA, is amended to read:

**“85-7-2211. Irrigation ditches – duties relating to safety.** An irrigation district or private person or entity owning or operating irrigation *diversions, aqueducts, canals, ditches, drains, flumes, headgates, siphons, or other water conveyance structures or infrastructure* **must shall** keep irrigation ~~ditches~~ *these structures and infrastructure* in good general repair and condition; ~~but for.~~ For the purpose of protecting persons and property from injury or damage, *the irrigation district, private person, or entity* has no duty to:

- (1) erect fences or other security measures;
- (2) install grates or other protective devices where a ~~ditch~~ *conveyed water* goes underground or under a bridge or other object; or
- (3) prevent access to ~~ditches~~ *water conveyance structures or facilities* by persons or animals.”

**Section 2.** Section 85-7-2212, MCA, is amended to read:

**“85-7-2212. Irrigation ditches – ~~nonliabilities~~ *limits of liability.*** An irrigation district or private person or entity owning or operating irrigation *diversions, aqueducts, canals, ditches, drains, flumes, headgates, siphons, or other water conveyance structures or infrastructure* is not liable for:

- (1) personal injury or property damage resulting from floodwaters caused by rainfall or other weather conditions or acts of nature;
- (2) personal injury or property damage occurring on another’s land and caused by water seepage that existed or began before the injured person first arrived on or obtained an interest in the land or before the damaged property was first placed on the land, if the seepage does not carry toxic chemicals onto the land;
- (3) injury to a person or property while, without authorization of the district or private person or entity, the person or property is on land or water controlled by the district or private person or entity, unless the irrigation district or private person or entity engaged in willful or wanton misconduct; or
- (4) *death of a person or animal* from a drowning or other causes, unless the irrigation district or private person or entity was grossly negligent or engaged in willful or wanton misconduct.”

**Section 3. Two-thirds vote required.** Because [section 2] 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.

Approved April 28, 2021

## CHAPTER NO. 306

[SB 338]

AN ACT REVISING CIVIL LIABILITY LAW; LIMITING THE DUTY OF CARE OWED TO A TRESPASSER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Liability of landowner to trespasser.** (1) Except as provided in subsection (2):

(a) A landowner owes a trespasser no duty of care with respect to the condition of the property.

(b) A trespasser enters or remains on the trespassed property without any assurance that the property is safe for any purpose.

(2) (a) A landowner may be liable to a trespasser for an injury to person or property for an act or omission that constitutes willful or wanton misconduct.

(b) This section does not affect any immunities from or defense to civil liability established by another section of the Montana Code Annotated or available at common law to which a landowner may be entitled.

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

(a) "Landowner" means a person or private entity, including a landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, and person or entities in control of the property or with an agreement to use or occupy the property.

(b) "Property" means privately owned real property of any kind. The term includes any improvements, buildings, structures, machinery, and equipment on the property.

**Section 2. Codification instruction.** [Section 1] is 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 [section 1].

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

Approved April 28, 2021

## CHAPTER NO. 307

[HB 136]

AN ACT ADOPTING THE MONTANA PAIN-CAPABLE UNBORN CHILD PROTECTION ACT; PROHIBITING THE ABORTION OF AN UNBORN CHILD CAPABLE OF FEELING PAIN; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; AND AMENDING SECTION 50-20-109, MCA.

WHEREAS, pain receptors are present throughout an unborn child's entire body no later than 16 weeks after fertilization, and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks gestational age; and

WHEREAS, by 8 weeks after fertilization, an unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling; and

WHEREAS, in the unborn child, application of painful stimuli is associated with significant increases in stress hormones known as the stress response; and

WHEREAS, subjection to painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life; and

WHEREAS, for the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without anesthesia; and

WHEREAS, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks gestational age; and

WHEREAS, the state asserts a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain; and

WHEREAS, an abortion occurring later in pregnancy may increase the risk to the woman of the occurrence of infection, sepsis, heavy bleeding, or a ruptured or perforated uterus.

*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 Pain-Capable Unborn Child Protection Act".

**Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(2) "Gestational age" means the age of an unborn child, calculated from the first day of the woman's last menstrual period.

(3) "Knowing" or "knowingly" has the meaning provided in 45-2-101.

(4) (a) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of a pregnant woman that it necessitates the immediate abortion of the woman's pregnancy without first determining gestational age in order to avert the woman's death or for which the delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(b) The term does not include a condition that is based on a claim or diagnosis that the woman will engage in conduct that the woman intends to result in the woman's death or in substantial and irreversible physical impairment of a major bodily function.

(5) "Medical practitioner" means a person authorized under 50-20-109 to perform an abortion.

(6) "Probable gestational age of an unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed or attempted.

(7) "Purposeful" or "purposely" has the meaning provided in 45-2-101.

(8) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent medical practitioner who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(9) "Serious health risk to the unborn child's mother" means that, in reasonable medical judgment, the mother has a condition that so complicates the mother's medical condition that it necessitates the abortion of the mother's pregnancy to avert the mother's death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No greater risk may be determined to exist if it is based on a claim or diagnosis that the mother will engage in conduct

that the mother intends to result in the mother's death or in substantial and irreversible impairment of a major bodily function.

(10) "Unborn child" or "fetus" means an individual organism of the species homo sapiens from fertilization until live birth.

**Section 3. Protection of unborn child capable of feeling pain from abortion.** (1) (a) A person may not perform or attempt to perform an abortion of an unborn child capable of feeling pain unless it is necessary to prevent a serious health risk to the unborn child's mother.

(b) For the purposes of this subsection (1), an unborn child is capable of feeling pain when it has been determined by the medical practitioner performing or attempting the abortion or by another medical practitioner on whose determination the medical practitioner relies that the probable gestational age of the unborn child is 20 or more weeks.

(2) Except in the case of a medical emergency, an abortion may not be performed or attempted unless the medical practitioner has first made a determination of the probable gestational age of the unborn child or relied on a determination made by another medical practitioner. In making this determination, the medical practitioner shall make inquiries of the woman and perform or cause to be performed medical examinations and tests that a reasonably prudent practitioner who is knowledgeable about the case and the medical conditions involved would consider necessary to perform in making an accurate diagnosis with respect to gestational age.

(3) When an abortion of an unborn child capable of feeling pain is necessary to prevent a serious health risk to the unborn child's mother, the medical practitioner shall terminate the pregnancy in the manner that, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No greater risk may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct that the woman intends to result in the woman's death or in substantial and irreversible physical impairment of a major bodily function.

**Section 4. Criminal penalties.** A person who purposely or knowingly performs or attempts to perform an abortion in violation of [section 3] is guilty of a felony punishable in accordance with 50-20-112.

**Section 5. Civil remedies.** (1) A woman on whom an abortion has been performed or attempted in violation of [section 3] or the father of the unborn child who was the subject of the abortion may maintain an action against the person who performed or attempted the abortion in a purposeful or knowing violation of [section 3] for actual and punitive damages.

(2) (a) A cause of action for injunctive relief against a person who has purposely or knowingly violated [section 3] may be maintained by:

(i) the woman on whom an abortion was performed or attempted or, if the woman is a minor, the woman's parent or guardian;

(ii) a person who is the spouse of the woman on whom an abortion has been performed or attempted;

(iii) a prosecuting attorney with appropriate jurisdiction; or

(iv) the attorney general.

(b) The injunction must prevent the person from performing or attempting additional abortions in violation of [section 3] in this state.

(3) If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall order the defendant to pay reasonable attorney fees to the plaintiff.

(4) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's lawsuit was frivolous and brought in bad faith, the court shall order the plaintiff to pay reasonable attorney fees to the defendant.

(5) Damages or attorney fees may not be assessed against the woman on whom an abortion was performed or attempted except in accordance with subsection (4).

**Section 6. Protection of privacy in court proceedings.** In a civil or criminal proceeding brought under [section 4] or [section 5], the court shall determine whether the anonymity of the woman on whom an abortion has been performed or attempted must be preserved from public disclosure if the woman does not consent to the disclosure. The court, on motion or sua sponte, shall make a determination and, on determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. The order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman on whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under [section 5(1) or (2)] shall do so under a pseudonym. This section may not be construed to conceal from the defendant or from attorneys for the defendant the identity of the plaintiff or of witnesses.

**Section 7.** Section 50-20-109, MCA, is amended to read:

**"50-20-109. Control of practice of abortion.** (1) Except as provided in 50-20-401, an abortion may not be performed within the state of Montana:

(a) except by a licensed physician or physician assistant;

(b) after viability of the fetus, except as provided in subsection (2) *on an unborn child capable of feeling pain, except as provided in [section 3].*

(2) ~~An abortion under subsection (1)(b) may be performed only to preserve the life or health of the mother and only if:~~

~~(a) the judgment of the physician who is to perform the abortion is first certified in writing by the physician, setting forth in detail the facts relied upon in making the judgment; and~~

~~(b) two other licensed physicians have first examined the patient and concurred in writing with the judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother.~~

~~(3) The timing and procedure used in performing an abortion under subsection (1)(b) must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.~~

~~(4) For purposes of this section, "health" means the prevention of a risk of substantial and irreversible impairment of a major bodily function.~~

~~(5)(2) The supervision agreement of a physician assistant may provide for performing abortions.~~

~~(6)(3) Violation of subsections (1) through (3) subsection (1) is a felony."~~

**Section 8. Codification instruction.** [Sections 1 through 6] are intended to be codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 6].

Approved April 26, 2021

## CHAPTER NO. 308

[HB 140]

AN ACT REQUIRING THAT A PREGNANT WOMAN MUST BE AFFORDED THE OPPORTUNITY TO VIEW AN ACTIVE ULTRASOUND AND ULTRASOUND IMAGES AND LISTEN TO THE FETAL HEART TONE OF THE UNBORN CHILD BEFORE UNDERGOING AN ABORTION; PROVIDING EXCEPTIONS; PROVIDING A PENALTY; AND AMENDING SECTION 50-20-105, MCA.

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

**Section 1. Provision of information – exceptions – penalty.**

(1) (a) Except as provided in subsection (2), a person performing an abortion on a pregnant woman or that person's agent shall inform the woman of the opportunity to:

- (i) view an active ultrasound of the unborn child;
- (ii) view an ultrasound image of the unborn child; and
- (iii) listen to the fetal heart tone of the unborn child, if audible.

(b) The quality of the active ultrasound, ultrasound image, and auscultation of the fetal heart tone must be consistent with standard medical practices in the community in which the abortion is being performed.

(2) Subsection (1) does not apply to a procedure performed with the intent to:

- (a) save the life of the woman;
- (b) ameliorate a serious risk of causing the woman substantial and irreversible impairment of a bodily function; or
- (c) remove an ectopic pregnancy.

(3) The person performing the abortion or that person's agent shall obtain the woman's signature on a certification form developed by the department that:

(a) contains an acknowledgment that the woman was informed of the opportunities provided for in subsection (1); and

(b) indicates whether the woman viewed the active ultrasound or ultrasound image or listened to the fetal heart tone.

(4) (a) Before an abortion is performed or attempted, the person who is performing or attempting the abortion must receive a copy of the signed certification form provided for in subsection (3).

(b) A copy of the certification form must be retained in the woman's medical record.

(5) A person who performs or attempts to perform an abortion in violation of this section is subject to a civil penalty of \$1,000.

**Section 2.** Section 50-20-105, MCA, is amended to read:

**“50-20-105. Duties of department.** (1) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(2) The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state resulting directly or indirectly from abortion, subject to the provisions of 50-20-110(5).

(3) The department shall report to the attorney general any apparent violation of this chapter.

(4) *The department shall develop a certification form for use in accordance with [section 1].*”

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 20, part 1, and the provisions of Title 50, chapter 20, part 1, apply to [section 1].

Approved April 26, 2021

## CHAPTER NO. 309

[HB 171]

AN ACT ADOPTING THE MONTANA ABORTION-INDUCING DRUG RISK PROTOCOL ACT; PROVIDING REQUIREMENTS FOR PROVIDING ABORTION-INDUCING DRUGS TO PREGNANT WOMEN; PROHIBITING PROVIDING ABORTION-INDUCING DRUGS IN SCHOOLS AND ON SCHOOL GROUNDS; REQUIRING INFORMED CONSENT; PROVIDING FOR THE REPORTING OF CHEMICAL ABORTIONS AND ADVERSE EVENTS AND COMPLICATIONS; PROVIDING DEFINITIONS; AND PROVIDING PENALTIES, CIVIL REMEDIES, AND PROFESSIONAL SANCTIONS.

WHEREAS, in September 2000, the U.S. Food and Drug Administration (FDA) approved the distribution and use of mifepristone (brand name Mifeprex), originally referred to as “RU-486”, an abortion-inducing drug, under the authority of 21 C.F.R. 314.520, also referred to as “Subpart H”, which is the only FDA approval process that allows for postmarketing restrictions. Specifically, the Code of Federal Regulations provides for accelerated approval of certain drugs that are shown to be effective but “can be safely used only if distribution or use is restricted”. The approved FDA protocol for Mifeprex/mifepristone was modified in March 2016; however, the FDA still requires that the distribution and use of Mifeprex/mifepristone be under the supervision of a qualified health care provider who has the ability to assess the duration of pregnancy, diagnose ectopic pregnancies, and provide surgical intervention or who has made plans to provide surgical intervention through another qualified physician; and

WHEREAS, court testimony by Planned Parenthood and other abortion providers has demonstrated that providers routinely and intentionally failed to follow the September 2000 FDA-approved protocol for Mifeprex/mifepristone. See, e.g., *Planned Parenthood Cincinnati Region v. Taft*, 459 F. Supp. 2d 626 (S.D. Oh. 2006); and

WHEREAS, the use of Mifeprex/mifepristone presents significant medical risks, including but not limited to uterine hemorrhage, viral infections, abdominal pain, cramping, vomiting, headache, fatigue, and pelvic inflammatory disease. Medical evidence demonstrates that women who use abortion-inducing drugs risk four times more complications than those who undergo surgical abortions. At least 3% to 8% of medical abortions fail to evacuate the pregnancy tissue and require surgical completion. One percent will fail to kill the fetus. If surgical completion is required after a failed medical abortion, the risk of premature delivery in a subsequent pregnancy is more than three times higher. Failure rates increase as gestational age increases. The gestational age range of 63 to 70 days has been inadequately studied. The 2016 FDA gestational age extension was based on only one study worldwide of little more than 300 women; and

WHEREAS, a woman's ability to provide informed consent depends on the extent to which the woman receives information sufficient to make an informed choice. The decision to abort "is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences". *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

WHEREAS, in recent years, physicians have developed a method to potentially reverse the effects of Mifeprex/mifepristone. This abortion pill reversal or "rescue" process has been discussed in a peer-reviewed study and is based on decades of the safe use of progesterone to stabilize and continue pregnancies. Progesterone has been used safely in pregnancies for decades and is used in in vitro fertilization, infertility treatments, and high-risk pregnancies, including those experiencing preterm labor. Using progesterone to reverse the effects of Mifeprex/mifepristone is a targeted response that is safe for the woman; and

WHEREAS, abortion "record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible". *Planned Parenthood v. Danforth*, 428 U.S. 80 at 52, 79-81 (1976).

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

**Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana Abortion-Inducing Drug Risk Protocol Act".

**Section 2. Legislative findings and purpose.** The purpose of [sections 1 through 14] is to further the important and compelling state interests of:

(1) protecting the health and welfare of a woman considering a chemical abortion;

(2) ensuring that a medical practitioner examines a woman prior to dispensing an abortion-inducing drug in order to confirm the gestational age of the unborn child, the intrauterine location of the unborn child, and that the unborn child is alive because the routine administration of an abortion-inducing drug following spontaneous miscarriage is unnecessary and exposes the woman to unnecessary risks associated with the abortion-inducing drug;

(3) ensuring that a medical practitioner does not prescribe or dispense an abortion-inducing drug after 70 days have elapsed since the first day of a woman's last menstrual period;

(4) reducing the risk that a woman may elect an abortion only to discover later, with devastating psychological consequences, that the woman's decision was not fully informed;

(5) ensuring that a woman considering a chemical abortion receives comprehensive information on abortion-inducing drugs, including the potential to reverse the effects of the drugs if the woman changes the woman's mind, and that a woman submitting to an abortion does so only after giving voluntary and fully informed consent to the procedure; and

(6) promoting the health and safety of women by adding to the sum of medical and public health knowledge through the compilation of relevant data on chemical abortions performed in the state as well as data on all medical complications and maternal deaths resulting from these abortions.

**Section 3. Definitions.** As used in [sections 1 through 14], the following definitions apply:

(1) "Abortion" means the act of using or prescribing an instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that termination by those means will with reasonable likelihood cause the

death of the unborn child. The term does not include an act to terminate a pregnancy with the intent to:

- (a) save the life or preserve the health of the unborn child;
- (b) remove a dead unborn child caused by spontaneous abortion;
- (c) remove an ectopic pregnancy; or
- (d) treat a maternal disease or illness for which the prescribed drug is indicated.

(2) "Abortion-inducing drug" or "chemical abortion" means a medicine, drug, or any other substance provided with the intent of terminating the clinically diagnosable pregnancy of a woman with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as mifepristone, misoprostol, and methotrexate. The term does not include drugs that may be known to cause an abortion that are prescribed for other medical indications.

(3) "Adverse event" means an untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related. The term does not include an adverse event or suspected adverse reaction that, had it occurred in a more severe form, might have caused death.

(4) "Associated medical practitioner" means a person authorized under 50-20-109 to perform an abortion who has entered into an associated medical practitioner agreement.

(5) "Complication" means an adverse physical or psychological condition arising from the performance of an abortion, including but not limited to uterine perforation, cervical perforation, infection, heavy or uncontrolled bleeding, hemorrhage, blood clots resulting in pulmonary embolism or deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion, pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, hemolytic reaction due to the administration of ABO-incompatible blood or blood products, adverse reactions to anesthesia and other drugs, subsequent development of breast cancer, death, psychological complications such as depression, suicidal ideation, anxiety, and sleeping disorders, and any other adverse event.

(6) "Last menstrual period" or "gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

(7) "Medical practitioner" means a person authorized under 50-20-109 to perform an abortion in this state.

(8) "Pregnant" or "pregnancy" means the female reproductive condition of having an unborn child in the uterus.

(9) "Provide" mean any act of giving, selling, dispensing, administering, transferring possession to, or otherwise providing or prescribing an abortion-inducing drug.

(10) "Qualified medical practitioner" means a medical practitioner who has the ability to:

- (a) identify and document a viable intrauterine pregnancy;
- (b) assess the gestational age of pregnancy and inform the woman of gestational age-specific risks;
- (c) diagnose ectopic pregnancy;
- (d) determine blood type and administer RhoGAM if a woman is Rh negative;

(e) assess for signs of domestic abuse, reproductive control, human trafficking, and other signals of coerced abortion;

(f) provide surgical intervention or who has entered into a contract with another qualified medical practitioner to provide surgical intervention; and

(g) supervise and bear legal responsibility for any agent, employee, or contractor who is participating in any part of a procedure, including but not limited to preprocedure evaluation and care.

(11) "Unborn child" means an individual organism of the species homo sapiens, beginning at fertilization, until the point of being born alive as defined in 1 U.S.C. 8(b).

**Section 4. In-person requirement.** An abortion-inducing drug may be provided only by a qualified medical practitioner following the procedures set forth in [sections 1 through 14]. A manufacturer, supplier, medical practitioner, qualified medical practitioner, or any other person may not provide an abortion-inducing drug via courier, delivery, or mail service.

**Section 5. Distribution of abortion-inducing drugs.** (1) Because the failure and complication rates from a chemical abortion increase with advancing gestational age and because the physical symptoms of chemical abortion can be identical to the symptoms of ectopic pregnancy and abortion-inducing drugs do not treat ectopic pregnancies and are contraindicated in ectopic pregnancies, the qualified medical practitioner providing an abortion-inducing drug shall examine the woman in person and, prior to providing an abortion-inducing drug, shall:

(a) independently verify that a pregnancy exists;

(b) determine the woman's blood type, and if the woman is Rh negative, be able to and offer to administer RhoGAM at the time of the abortion;

(c) inform the woman that the woman may see the remains of the unborn child in the process of completing the abortion; and

(d) document in the woman's medical chart the gestational age and intrauterine location of the pregnancy and whether the woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care.

(2) A qualified medical practitioner providing an abortion-inducing drug must be credentialed and competent to handle complications management, including emergency transfer, or must have a signed contract with an associated medical practitioner who is credentialed to handle complications and must be able to produce the signed contract on demand by the woman or by the department. Each woman to whom a qualified medical practitioner provides an abortion-inducing drug must be given the name and phone number of the associated medical practitioner.

(3) The qualified medical practitioner providing an abortion-inducing drug, or an agent of the qualified medical practitioner, shall schedule a follow-up visit for the woman at approximately 7 to 14 days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The qualified medical practitioner shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making the efforts, must be included in the woman's medical record.

**Section 6. Prohibition on providing abortion-inducing drugs at elementary, secondary, and postsecondary schools.** An abortion-inducing drug may not be provided in an elementary, secondary, or postsecondary school facility or on school grounds.

**Section 7. Informed consent requirements for abortion-inducing drugs.** (1) An abortion-inducing drug may not be provided without the informed consent of the pregnant woman to whom the abortion-inducing drug is being provided.

(2) Informed consent to a chemical abortion must be obtained at least 24 hours before the abortion-inducing drug is provided to the pregnant woman, except when, in reasonable medical judgment, compliance with this subsection would pose a greater risk of:

(a) the death of the pregnant woman; or

(b) the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the pregnant woman.

(3) A form created by the department must be used by a qualified medical practitioner to obtain the consent required prior to providing an abortion-inducing drug.

(4) A consent form is not valid and consent is not sufficient unless:

(a) the woman initials each entry, list, description, or declaration required to be included in the consent form as provided in subsection (5);

(b) the woman signs the consent statement described in subsection (5)(j); and

(c) the qualified medical practitioner signs the qualified medical practitioner declaration described in subsection (5)(k).

(5) The consent form must include, but is not limited to the following:

(a) the probable gestational age of the unborn child as determined by both patient history and ultrasound results used to confirm gestational age;

(b) a detailed description of the steps to complete the chemical abortion;

(c) a detailed list of the risks related to the specific abortion-inducing drug or drugs to be used, including but not limited to hemorrhage, failure to remove all tissue of the unborn child, which may require an additional procedure, sepsis, sterility, and possible continuation of pregnancy;

(d) information about Rh incompatibility, including that if the pregnant woman has an Rh negative blood type, the woman should receive an injection of Rh immunoglobulin at the time of the abortion to prevent Rh incompatibility in future pregnancies, which can lead to complications and miscarriage in future pregnancies;

(e) a description of the risks of complications from a chemical abortion, including incomplete abortion, which increase with advancing gestational age;

(f) information about the possibility of reversing the effects of the chemical abortion if the pregnant woman changes the woman's mind and that time is of the essence;

(g) information that the pregnant woman could see the remains of the unborn child in the process of completing the abortion;

(h) information that initial studies suggest that children born after reversing the effects of an abortion-inducing drug have no greater risk of birth defects than the general population and that initial studies suggest that there is no increased risk of maternal mortality after reversing the effects of an abortion-inducing drug;

(i) notice that information on and assistance with reversing the effects of abortion-inducing drugs are available in the state-prepared materials; and

(j) an acknowledgment of risks and consent statement, which must be signed by the woman. The statement must include but is not limited to the following declarations, which must be individually initialed by the woman, that:

(i) the woman understands that the abortion-inducing drug regimen or procedure is intended to end the woman's pregnancy and will result in the death of the unborn child;

(ii) the woman is not being forced to have an abortion, the woman has the choice not to have the abortion, and the woman may withdraw the woman's consent to the abortion-inducing drug regimen even after beginning the abortion-inducing drug regimen;

(iii) the woman understands that the chemical abortion regimen or procedure to be used has specific risks and may result in specific complications;

(iv) the woman has been given the opportunity to ask questions about the woman's pregnancy, the development of the unborn child, alternatives to abortion, the abortion-inducing drug or drugs to be used, and the risks and complications inherent to the abortion-inducing drug or drugs to be used;

(v) the woman was specifically told that "information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at [www.abortionpillreversal.com](http://www.abortionpillreversal.com), or you can contact (877) 558-0333 for assistance in locating a medical professional who can aid in the reversal of an abortion";

(vi) the woman has been provided access to state-prepared, printed materials on informed consent for abortion;

(vii) if applicable, the woman has been given the name and phone number of the associated medical practitioner who has agreed to provide medical care and treatment in the event of complications associated with the abortion-inducing drug regimen or procedure;

(viii) the qualified medical practitioner will schedule an in-person follow-up visit for the woman approximately 7 to 14 days after providing the abortion-inducing drug or drugs to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications;

(ix) the woman has received or been given sufficient information to give the woman's informed consent to the abortion-inducing drug regimen or procedure; and

(x) the woman has a private right of action to sue the qualified medical practitioner under the laws of the state if the woman feels coerced or misled prior to obtaining an abortion and how to access state resources regarding the woman's legal right to obtain relief; and

(k) a qualified medical practitioner declaration that must be signed by the qualified medical practitioner, stating that the qualified medical practitioner has explained the abortion-inducing drug or drugs to be used, has provided all of the information required in this subsection (5), and has answered all of the woman's questions.

#### **Section 8. Information required in state-prepared materials.**

(1) The department shall publish state-prepared, printed materials on informed consent for abortion and shall include the following statement:

"Information on the potential ability of qualified medical practitioners to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at [www.abortionpillreversal.com](http://www.abortionpillreversal.com), or you can contact (877) 558-0333 for assistance in locating a medical professional who can aid in the reversal of an abortion."

(2) The department shall annually review and update, if necessary, the statement requirement under subsection (1).

(3) As part of the informed consent counseling services required in [section 7], the qualified medical practitioner shall inform the pregnant woman about abortion pill reversal and provide the woman with the state-prepared materials described in subsection (1).

**Section 9. Reporting on chemical abortions.** (1) For the purpose of promoting maternal health and adding to the sum of medical and public health knowledge through the compilation of relevant data, a report of each chemical abortion performed must be made to the department on forms prescribed by the department. The reports must be completed by the facility in which the abortion-inducing drug was provided, signed by the qualified medical practitioner who provided the abortion-inducing drug, and transmitted to the department within 15 days after each reporting month.

(2) A report must include, at a minimum, the following information:

(a) identification of the qualified medical practitioner who provided the abortion-inducing drug;

(b) whether the chemical abortion was completed at the facility in which the abortion-inducing drug was provided or at an alternative location;

(c) the referring medical practitioner, agency, or service, if any;

(d) the pregnant woman's county, state, and country of residence;

(e) the pregnant woman's age and race;

(f) the number of previous pregnancies, number of live births, and number of previous abortions of the pregnant woman;

(g) the probable gestational age of the unborn child as determined by both patient history and ultrasound results used to confirm the gestational age. The report must include the date of the ultrasound and gestational age determined on that date.

(h) the abortion-inducing drug or drugs used, the date each was provided to the pregnant woman, and the reason for the abortion, if known;

(i) preexisting medical conditions of the pregnant woman that would complicate the pregnancy, if any;

(j) whether the woman returned for a follow-up examination to determine completion of the abortion procedure and to assess bleeding, the date and results of the follow-up examination, and what reasonable efforts were made by the qualified medical practitioner to encourage the woman to return for a follow-up examination if the woman did not;

(k) whether the woman suffered any complications and, if so, what specific complications arose and what follow-up treatment was needed; and

(l) the amount billed to cover the treatment for specific complications, including whether the treatment was billed to medicaid, private insurance, private pay, or another method, including charges for any physician, hospital, emergency room, prescription or other drugs, laboratory tests, and other costs for treatment rendered.

(3) Reports required under this section may not contain:

(a) the name of the pregnant woman;

(b) common identifiers, such as a social security number or driver's license number; or

(c) other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a pregnant woman who has obtained or seeks to obtain a chemical abortion.

(4) A qualified medical practitioner who provides an abortion-inducing drug to a pregnant woman who knows that the woman experiences, during or after the use of the abortion-inducing drug, an adverse event shall provide a written report of the adverse event within 3 days of the event to the United States food and drug administration via the medwatch reporting system, to the department, and to the state board of medical examiners.

(5) (a) A medical practitioner, qualified medical practitioner, associated medical practitioner, or other health care provider who treats a woman, either contemporaneously to or at any time after a chemical abortion, for an adverse

event or complication related to a chemical abortion shall make a report of the adverse event to the department on forms prescribed by the department. The reports must be completed by the facility in which the adverse event or complication treatment was provided, signed by the medical practitioner, qualified medical practitioner, associated medical practitioner, or other health care provider who treated the adverse event or complication, and transmitted to the department within 15 days after each reporting month.

(b) The report must include, at a minimum:

(i) the information required under subsections (2)(a) through (2)(j) and (2)(l); and

(ii) information about the specific complications that arose, whether an emergency transfer was required, and whether any follow-up treatment was needed, including whether additional drugs or medications were provided in order to complete the abortion.

(6) The department shall prepare a comprehensive annual statistical report for the legislature based on the data gathered from reports under this section. The aggregated data must also be made available to the public by the department in a downloadable format.

(7) The department shall summarize aggregate data from the reports required under [sections 1 through 14] and submit the data to the U.S. centers for disease control and prevention for the purpose of inclusion in the annual vital statistics report.

(8) Reports filed pursuant to this section must be deemed public records and must be available to the public in accordance with the confidentiality and public records reporting laws of this state. Original copies of all reports filed under this section must be available to the state board of medical examiners, state board of pharmacy, state law enforcement officials, and child protective services for use in the performance of their official duties.

(9) Absent a valid court order or judicial subpoena, the department or any other state department, agency, office, or employee may not compare data concerning chemical abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system, the comparison of which could result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain a chemical abortion.

(10) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain a chemical abortion may not be maintained by the department or any other state department, agency, office, employee, or contractor.

(11) The department shall communicate the reporting requirements of this section to all medical professional organizations, medical practitioners, and facilities operating in the state.

**Section 10. Production of reporting forms.** The department shall create and distribute the forms required by [sections 1 through 14] within 60 days after [the effective date of this act].

**Section 11. Criminal penalties.** (1) A person who purposely or knowingly or negligently violates any provision of [sections 1 through 14] is guilty of a felony and upon conviction shall be fined an amount not to exceed \$50,000, be imprisoned in a state prison for a term not to exceed 20 years, or both. As used in this section, “purposely”, “knowingly”, and “negligently” have the meanings provided in 45-2-101.

(2) A criminal penalty may not be assessed against the pregnant woman on whom the chemical abortion is attempted or performed.

**Section 12. Civil remedies and professional sanctions.** (1) In addition to all other remedies available under the laws of this state, failure to comply with the requirements of [sections 1 through 14]:

(a) provides a basis for a civil malpractice action for actual and punitive damages;

(b) provides a basis for professional disciplinary action under Title 37 for the suspension or revocation of the license of a health care provider; and

(c) provides a basis for recovery for the woman's survivors for the wrongful death of the woman under 27-1-513.

(2) Civil liability may not be imposed against the pregnant woman on whom the chemical abortion is attempted or performed.

(3) When requested, the court shall allow a woman to proceed using solely the woman's initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman on whom the chemical abortion was attempted or performed.

(4) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

(5) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court may render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

**Section 13. Construction.** [Sections 1 through 14] may not be construed to:

(1) create or recognize a right to abortion;

(2) make lawful an abortion that is otherwise unlawful; or

(3) repeal, replace, or otherwise invalidate existing federal laws, regulations, or policies.

**Section 14. Right of intervention.** The legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored [sections 1 through 14] in the member's official capacity, to intervene as a matter of right in any case in which the constitutionality of [sections 1 through 14] is challenged.

**Section 15. Codification instruction.** [Sections 1 through 14] are intended to be codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 14].

**Section 16. 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 26, 2021

## CHAPTER NO. 310

[HB 477]

AN ACT GENERALLY REVISING LAWS RELATING TO MARRIAGE AND FAMILY THERAPISTS; REQUIRING AT LEAST ONE LICENSED MARRIAGE AND FAMILY THERAPIST TO BE APPOINTED TO THE BOARD OF BEHAVIORAL HEALTH; AND AMENDING SECTION 2-15-1744, MCA.

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

**Section 1.** Section 2-15-1744, MCA, is amended to read:

**“2-15-1744. Board of behavioral health.** (1) (a) The governor shall appoint, with the consent of the senate, a board of behavioral health consisting of ~~nine~~ 10 members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors. ~~At least one of these members who is licensed as a social worker or professional counselor must also be licensed as a marriage and family therapist.~~

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(d) Two members must be licensed addiction counselors.

(e) *One member must be a licensed marriage and family therapist.*

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

(3) Members shall serve staggered 4-year terms.”

Approved April 26, 2021

## CHAPTER NO. 311

[HB 491]

AN ACT REVISING ACCESS TO MILITARY DISCHARGE RECORDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 7-4-2614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

### **Section 1. Release of military discharge documents – rulemaking.**

(1) Subject to subsection (2), the Montana veterans’ affairs division shall release on request a military discharge document that is dated 62 years or more before the date on which the request is made and that is a public record pursuant to 5 U.S.C. 552a and implementing federal regulations.

(2) (a) A request for a military discharge document under this section must be made on a form prescribed by the board and contain enough information to make the document discoverable.

(b) If a military discharge document contains a social security number, that number must be redacted before the document is released.

(3) The board may adopt rules to administer this section.

### **Section 2.** Section 7-4-2614, MCA, is amended to read:

**“7-4-2614. Records of ~~certificates~~ of discharge from military service.** (1) It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the ~~certificate document~~ of discharge of an honorably discharged person who served with the United States forces upon that person’s request. It is not the clerk’s duty to file the ~~certificate document~~.

(2) A record of a military discharge ~~certificate~~ is confidential information as defined in 2-6-1002 and is protected from disclosure, *except as provided in this section*. A military discharge ~~certificate document~~ may be disclosed only to:

(a) the service member for whom the ~~certificate document~~ was recorded;

(b) if the service member is deceased, the next of kin of the service member or a mortuary, as defined in 10-2-111, for the purposes of securing the burial benefits to which the service member is entitled;

(c) a veterans’ service officer or a veterans’ service organization, as defined in 10-2-111;

(d) the veterans’ affairs division of the Montana department of military affairs; or

(e) any person with written authorization from the service member or from the next of kin of the service member, if the service member is deceased; or

(f) a person who presents a written request for a military discharge document with a discharge date that is 62 years or more prior to the date on which the request is made and that is a public record under 5 U.S.C. 552a and implementing federal regulations. However, if the military discharge document contains a social security number, that number must be redacted before the document is released.

(3) If an original discharge certificate document was inadvertently filed and the county clerk still retains the certificate document in its original form, upon the written request of the service member or of the service member's next of kin if the service member is deceased, the clerk shall return the filed certificate document to the service member or to the service member's next of kin if the service member is deceased.

(4) For purposes of this section:

(a) "file" means to store in original form; and

(b) "record" means to make and keep a copy from which a certified original copy can be reproduced."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, and the provisions of Title 10 apply to [section 1].

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

Approved April 26, 2021

## CHAPTER NO. 312

[HB 517]

AN ACT GENERALLY REVISING MARIJUANA PENALTIES FOR PERSONS UNDER 21 YEARS OF AGE; REQUIRING THE POSSESSION, USE, AND DELIVERY OR DISTRIBUTION WITHOUT CONSIDERATION OF MARIJUANA BY A PERSON UNDER 21 YEARS OF AGE TO BE PUNISHED IN ACCORDANCE WITH 45-5-624, MCA; AMENDING SECTIONS 16-12-106 AND 45-5-624, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 16-12-106, MCA, is amended to read:

**"16-12-106. Personal use and cultivation of marijuana – penalties.**

(1) Subject to the limitations in 16-12-108, the following acts are lawful and may not be an offense under state law or the laws of any local government within the state, be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain, search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government for a person who is 21 years of age or older:

(a) possessing, purchasing, obtaining, using, ingesting, inhaling, or transporting 1 ounce or less of marijuana, except that not more than 8 grams may be in a concentrated form;

(b) transferring, delivering, or distributing without consideration, to a person who is 21 years of age or older, 1 ounce or less of marijuana, except that not more than 8 grams may be in a concentrated form;

(c) in or on the grounds of a private residence, possessing, planting, or cultivating up to four mature marijuana plants and four seedlings and

possessing, harvesting, drying, processing, or manufacturing the marijuana, provided that:

(i) marijuana plants and any marijuana produced by the plants in excess of 1 ounce must be kept in a locked space in or on the grounds of one private residence and may not be visible by normal, unaided vision from a public place;

(ii) not more than twice the number of marijuana plants permitted under this subsection (1)(c) may be cultivated in or on the grounds of a single private residence simultaneously;

(iii) a person growing or storing marijuana plants under this subsection (1)(c) must own the private residence where the plants are cultivated and stored or obtain written permission to cultivate and store marijuana from the owner of the private residence; and

(iv) no portion of a private residence used for cultivation of marijuana and manufacture of marijuana-infused products for personal use may be shared with, rented, or leased to an adult-use provider or an adult-use marijuana-infused products provider;

(d) assisting another person who is at least 21 years of age in any of the acts permitted by this section, including allowing another person to use one's personal residence for any of the acts described in this section; and

(e) possessing, purchasing, using, delivering, distributing, manufacturing, transferring, or selling to persons 18 years of age or older paraphernalia relating to marijuana.

(2) A person who cultivates marijuana plants that are visible by normal, unaided vision from a public place in violation of subsection (1)(c)(i) is subject to a civil fine not exceeding \$250 and forfeiture of the marijuana.

(3) A person who cultivates marijuana plants or stores marijuana outside of a locked space is subject to a civil fine not exceeding \$250 and forfeiture of the marijuana.

(4) A person who smokes marijuana in a public place, other than in an area licensed for that activity by the department, is subject to a civil fine not exceeding \$50.

(5) For a person who is under 21 years of age and is not a registered cardholder, possession, use, ~~ingestion, inhalation, transportation,~~ delivery without consideration, or distribution without consideration of ~~1 ounce or less~~ of marijuana is punishable by forfeiture of the marijuana and the underage person's choice between:

(a) ~~a civil fine not to exceed \$100; or~~

(b) ~~up to 4 hours of drug education or counseling in lieu of the fine in accordance with 45-5-624.~~

(6) For a person who is under 18 years of age and is not a registered cardholder, possession, use, transportation, delivery without consideration, or distribution without consideration of marijuana paraphernalia is punishable by forfeiture of the marijuana paraphernalia and the underage person's choice between:

(a) ~~a civil fine not to exceed \$100; or~~

(b) ~~up to 4 8 hours of drug education or counseling in lieu of the fine.~~

(7) Unless otherwise permitted under the provisions of Title 50, chapter 46, part 3, the possession, production, delivery without consideration to a person 21 years of age or older, or possession with intent to deliver more than 1 ounce but less than 2 ounces of marijuana or more than 8 grams but less than 16 grams of marijuana in a concentrated form is punishable by forfeiture of the marijuana and:

(a) for a first violation, the person's choice between a civil fine not exceeding \$200 or completing up to 4 hours of community service in lieu of the fine;

(b) for a second violation, the person's choice between a civil fine not exceeding \$300 or completing up to 6 hours of community service in lieu of the fine; *and*

(c) for a third or subsequent violation, the person's choice between a civil fine not exceeding \$500 or completing up to 8 hours of community service in lieu of the fine; *and*

~~(d) for a person under 21 years of age, the person's choice between a civil fine not to exceed \$200 or attending up to 8 hours of drug education or counseling in lieu of the fine.~~

(8) A person may not be denied adoption, custody, or visitation rights relative to a minor solely for conduct that is permitted by this chapter.

(9) A person may not be denied access to or priority for an organ transplant or denied access to health care solely for conduct that is permitted by this chapter.

(10) A person currently under parole, probation, or other state supervision or released awaiting trial or other hearing may not be punished or otherwise penalized solely for conduct that is permitted by this chapter.

(11) A holder of a professional or occupational license may not be subjected to professional discipline for providing advice or services arising out of or related to conduct that is permitted by this chapter solely on the basis that marijuana is prohibited by federal law.

(12) It is the public policy of the state of Montana that contracts related to the operation of licensees be enforceable."

**Section 2.** Section 45-5-624, MCA, is amended to read:

**"45-5-624. Possession of or unlawful attempt to purchase intoxicating substance – interference with sentence or court order.**

(1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes *or, uses,* has in the person's possession, *or delivers or distributes without consideration* an intoxicating substance. A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages *or marijuana*. A person does not commit the offense if the person consumes or gains possession of an alcoholic beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages *or marijuana*.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

(i) for a first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (8), if one is available; and

(C) if the person has a driver's license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

(ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

(A) shall be ordered to perform 40 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (8), if one is available;

(C) if the person has a driver's license, must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b); and

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (7);

(iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (8), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (7). If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).

(b) If the convicted person fails to complete the community-based substance abuse information course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.

(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense:

(i) shall be fined an amount not less than \$100 or more than \$300;

(ii) shall be ordered to perform 20 hours of community service; and

(iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (8);

(b) for a second offense:

(i) shall be fined an amount not less than \$200 or more than \$600;

(ii) shall be ordered to perform 40 hours of community service; and

(iii) shall be ordered to complete and pay for an alcohol *or drug* information course at an alcohol *or drug* treatment program that meets the requirements of subsection (8), which may, in the court's discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

(c) for a third or subsequent offense:

(i) shall be fined an amount not less than \$300 or more than \$900;

(ii) shall be ordered to perform 60 hours of community service;

(iii) shall be ordered to complete and pay for an alcohol *or drug* information course at an alcohol *or drug* treatment program that meets the requirements of subsection (8), which may, in the sentencing court's discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage *or marijuana*. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (8) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment, if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (8).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based on the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(8) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol *and* drug information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at an alcohol *or* drug treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (7) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(9) Information provided or statements made by a person under 21 years of age to a health care provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also extends to a person who helps the victim obtain medical or other assistance or report the offense to law enforcement personnel.

(10) (a) A person under 21 years of age may not be charged or prosecuted under subsection (1) if:

(i) the person has consumed an intoxicating substance and seeks medical treatment at a health care facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of seeking medical treatment;

(ii) the person accompanies another person under 21 years of age who has consumed an intoxicating substance and seeks medical treatment at a health care facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of seeking medical treatment for the other person; or

(iii) the person requires medical treatment as a result of consuming an intoxicating substance and evidence of a violation of this section is obtained during the course of seeking or receiving medical treatment.

(b) For the purposes of this subsection (10), the following definitions apply:

(i) "Health care facility" means a facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

(ii) "Medical treatment" means medical treatment provided by a health care facility or an emergency medical service. (See compiler's comments for contingent termination of certain text.)"

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

Approved April 26, 2021

## CHAPTER NO. 313

[SB 63]

AN ACT CLARIFYING LAND BOARD AUTHORITY TO LEASE STATE LANDS FOR WIND AND SOLAR RESOURCES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 77-1-902, MCA.

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

**Section 1.** Section 77-1-902, MCA, is amended to read:

**"77-1-902. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(2) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(3) (a) “Commercial purpose” means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, mineral, and ~~geothermal~~ resources *from geothermal, wind, or solar*;

(iv) single-family residences, home sites, and cabin sites; and

(v) utility rights-of-way.

(4) “Land value” is the monetary value of the land determined by an appraisal by a certified general appraiser or a department staff appraiser or by a limited valuation.

(5) “Limited valuation” means estimating the land value of commercial lease land by analyzing comparable land valuations conducted within 2 years of the lease commencement date as provided by real estate appraisers, local tax assessors, local realtors, an evaluation of local market rents, or a combination of those methods.

(6) “Termination” means the automatic completion or ending of the term of a contract according to its provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease.”

**Section 2. Wind and solar leases authorized.** (1) The board may lease state lands for exploration, planning, development, and the production of energy from wind and solar resources.

(2) Leases for wind or solar rights only where no ground disturbance is authorized do not require reclassification.

(3) The board may exercise business discretion in entering leases under this part.

**Section 3. Compensating surface lessee.** (1) A person who leases wind or solar resources under this part shall compensate the surface lessee for damage to the surface improvements caused by the lease.

(2) (a) The board may require the wind or solar resource lessee to post a bond in an amount set by the board to insure the payment of damages to any surface lessee.

(b) If a surface lessee and a wind or solar resource lessee disagree on the reasonable amount of surface damage, compensation is determined in the manner prescribed by 77-4-129.

**Section 4. Lease provisions.** (1) A lessee under this part has exclusive rights of possession of the lands or interest leased, subject to conditions in the lease and compliance with the lease.

(2) The state reserves the right in leases under this part to sell, lease, or otherwise dispose of the surface, and the right to lease or exchange the subsurface, of the lands covered by the lease subject to the rights and privileges granted the lessee under the terms of the lease.

(3) A lease must specify the rental to be paid, duration, reasonable forfeiture provisions, bonding, and decommissioning terms.

(4) A lease may contain other provisions that the board and the lessee agree upon that are consistent with this part.

**Section 5. Rental and disposition of rent and other receipts.** (1) The rental payment to the state for a wind resource development lease may not be less than the full market value of the interest described in the approved lease.

(2) Rentals are credited to the income fund of the grant to which the lands under each lease belong.

**Section 6. Rulemaking.** The board may adopt rules governing the issuance of leases under this part.

**Section 7. Codification instruction.** [Sections 2 through 6] are intended to be codified as an integral part of Title 77, chapter 4, and the provisions of Title 77, chapter 4, apply to [sections 2 through 6].

Approved April 30, 2021

## CHAPTER NO. 314

[SB 91]

AN ACT REVISING FISCAL NOTE PROCEDURES TO ALLOW FOR A FISCAL NOTE WHEN AN INITIATIVE OR BILL HAS A FISCAL EFFECT ON PRIVATE ENTITIES; ALLOWING THE BUDGET DIRECTOR TO IDENTIFY AND SECURE A QUALIFIED FISCAL ESTIMATING PROVIDER WILLING TO PROVIDE A DRAFT ESTIMATE AT NO COST TO THE STATE; PROVIDING FOR CONTINGENT VOIDNESS; AMENDING SECTIONS 5-4-201 AND 5-4-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 5-4-201, MCA, is amended to read:

**“5-4-201. Requirement of fiscal notes with committee reports.**

(1) All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state ~~or of a county or municipality; or of a county or municipality~~, except appropriation measures carrying specific dollar amounts, ~~shall~~ *must* include a fiscal note incorporating an estimate of ~~such~~ *the* effect. ~~Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.~~ *Fiscal notes must be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.*

(2) *All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of a private entity engaged in business in the state, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the effect, unless by September 1, 2022, the budget director is unable to identify and secure a qualified fiscal estimating provider in the state, such as the economics department of a college or university, willing to provide a draft estimate at no cost to the state.”*

**Section 2.** Section 5-4-205, MCA, is amended to read:

**“5-4-205. Contents of notes.** (1) Fiscal notes must, when possible, show in dollar amounts the estimated increase or decrease in revenue or expenditures, costs that may be absorbed without additional funds, and long-range financial implications. A comment or opinion relative to the merits of the bill may not be included in the fiscal note. However, technical or mechanical defects may be noted.

(2) It is the legislature’s intent that a fiscal note be prepared as an objective analysis of the fiscal impact of legislation *on both government entities and private entities engaged in business in the state as provided in 5-4-201*. The fiscal note should represent only the estimate of the revenue and expenditures that would result from the implementation of the legislation, if enacted, and may not in any way reflect the views or opinions of the preparing agencies, the

sponsor, or other interested parties. Changes in revenue must be estimated for each reported year based upon appropriate revenue estimating methodologies for the source of revenue described and should reflect a change from the official revenue estimate provided for in 5-5-227. Expenditures must be estimated as the amount required for implementing the legislation, if enacted, in excess of or as a reduction to the present law base level of expenditures in each reported year regardless of whether or not the preparing agency determines that it can absorb the costs in its proposed budget.

(3) The fiscal note must clearly differentiate between facts and assumptions made in the preparation of the fiscal note while maintaining a logical flow of both fact and assumption in presenting how the fiscal impact is determined.”

**Section 3. Contingent voidness.** (1) If the budget director is unable to identify and secure a qualified fiscal estimating provider in Montana, such as the economics department of a college or university, willing to provide a draft estimate at no cost to the state as provided in [section 1], then [this act] is void.

(2) The budget director shall notify the code commissioner if the contingency in subsection (1) occurs.

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

Approved April 30, 2021

## CHAPTER NO. 315

[SB 93]

AN ACT AUTHORIZING POLL WATCHERS AT EACH PLACE OF DEPOSIT IN MAIL BALLOT ELECTIONS; AND AMENDING SECTIONS 13-13-120, 13-13-121, AND 13-19-307, MCA.

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

**Section 1.** Section 13-13-120, MCA, is amended to read:

**“13-13-120. Poll watchers – announcement of elector’s name – poll watchers authorized at places of deposit in mail ballot elections.**

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

(2) A candidate may not serve as a poll watcher at a polling place where electors are voting on ballots with the candidate’s name on them.

(3) *At least one poll watcher from each political party must be permitted at each place of deposit designated under 13-19-307 for a mail ballot election.”*

**Section 2.** Section 13-13-121, MCA, is amended to read:

**“13-13-121. Additional poll watchers.** A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct or any place of deposit designated under 13-19-307 for a mail ballot election. The election administrator shall grant such requests if the number of poll watchers at the polling place or place of deposit will not interfere with the election procedures.”

**Section 3.** Section 13-19-307, MCA, is amended to read:

**“13-19-307. Places of deposit – *poll watchers authorized.*** (1) (a) The election administrator shall designate 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 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 functions as a place of deposit only on election day.

(5) Each place of deposit must be staffed by at least two election officials who, except for election judges serving in elections under Title 20, chapter 20, are selected in the same manner as provided for the selection of election judges in 13-4-102.

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

(7) *Poll watchers must be allowed as provided in 13-13-120 and 13-13-121 at each place of deposit during the days and times that the place of deposit is open for the return of ballots.”*

Approved April 30, 2021

## CHAPTER NO. 316

[SB 99]

AN ACT ESTABLISHING PARAMETERS FOR K-12 HUMAN SEXUALITY EDUCATION; ALLOWING A PARENT OR GUARDIAN OF A CHILD TO REMOVE THE CHILD FROM HUMAN SEXUALITY INSTRUCTION; PROVIDING A DEFINITION OF HUMAN SEXUALITY INSTRUCTION; REQUIRING A SCHOOL DISTRICT TO INFORM A PARENT OR GUARDIAN WHEN EVENTS OR COURSES ON HUMAN SEXUALITY WILL BE HELD OR TAUGHT; PROHIBITING A SCHOOL DISTRICT FROM ALLOWING ANY ABORTION SERVICES PROVIDER TO OFFER MATERIALS OR INSTRUCTION AT A SCHOOL; AMENDING SECTION 20-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 20-5-103, MCA, is amended to read:

**“20-5-103. Compulsory attendance and excuses.** (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which the child is enrolled for the school term and each school day in the term prescribed by the trustees of the district until the later of the following dates:

(a) the child’s 16th birthday; or

(b) the date of completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202.

(d) *The child is excused pursuant to [section 2].*”

**Section 2. Excused absences from curriculum requirements – notice – prohibited activities.** (1) A parent, guardian, or other person who is responsible for the care of a child may refuse to allow the child to attend or withdraw the child from a course of instruction, a class period, an assembly, an organized school function, or instruction provided by the district through its staff or guests invited at the request of the district regarding human sexuality instruction. The withdrawal or refusal to attend is an excused absence pursuant to 20-5-103.

(2) Any school implementing or maintaining a curriculum, providing materials, or holding an event or assembly at which the district provides human sexuality instruction, whether introduced by school educators, administrators, or officials or by guests invited at the request of the school, shall adopt a policy ensuring parental or guardian notification no less than 48 hours prior to holding an event or assembly or introducing materials for instructional use.

(3) A school district shall annually notify the parent or guardian of each student scheduled to be enrolled in human sexuality instruction in the district or school in advance of the instruction of:

(a) the basic content of the district’s or school’s human sexuality instruction intended to be taught to the student; and

(b) the parent’s or guardian’s right to withdraw the student from the district’s or school’s human sexuality instruction.

(4) A school district shall make all curriculum materials used in the district’s or school’s human sexuality instruction available for public inspection prior to the use of the materials in actual instruction.

(5) A school district or its personnel or agents may not permit a person, entity, or any affiliate or agent of the person or entity to offer, sponsor, or furnish in any manner any course materials or instruction relating to human sexuality or sexually transmitted diseases to its students or personnel if the person, entity, or any affiliate or agent of the person or entity is a provider of abortion services.

(6) For purposes of this section, “human sexuality instruction” means teaching or otherwise providing information about human sexuality, including intimate relationships, human sexual anatomy, sexual reproduction, sexually transmitted infections, sexual acts, sexual orientation, gender identity, abstinence, contraception, or reproductive rights and responsibilities.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [section 2].

**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. Effective date.** [This act] is effective July 1, 2021.

Approved April 30, 2021

**CHAPTER NO. 317**

[SB 136]

AN ACT CLARIFYING THE LEGAL AVAILABILITY ANALYSIS FOR A PERMIT AND A CHANGE IN WATER RIGHT; AMENDING SECTIONS 85-2-311 AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 85-2-311, MCA, is amended to read:

**“85-2-311. Criteria for issuance of permit.** (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of ~~existing legal demands~~ *existing legal demands of water rights* on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the ~~existing legal demands~~ *existing legal demands of water rights*, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the ~~existing legal demands~~ *existing legal demands of water rights* on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant’s plan for the exercise of the permit that demonstrates that the applicant’s use of the water will be controlled so the water right of a prior appropriator will be satisfied. [The applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to approval filed pursuant to subsection (9) in connection with a permit application.]

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) 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 use has 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 under the permit;

- (f) the water quality of a prior appropriator will not be adversely affected;
- (g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and
- (h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) 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 (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for 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 applicant proves by clear and convincing evidence that:

- (a) the criteria in subsection (1) are met;
- (b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:
  - (i) the ~~existing demands~~ *existing legal demands of water rights* on the state water supply, as well as projected ~~demands~~ *legal demands of water rights*, such as reservations of 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 beneficial 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.

(4) (a) 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 criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

- (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) 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.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department 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 application could 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~~ *existing legal demands of water rights* placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease 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, lease, and use of water.

(5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint 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 appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) For an application for ground water in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, the applicant shall comply with the provisions of 85-2-360 in addition to the requirements of this section.

[(9) The department may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a permit.] (Bracketed language in subsections (1)(b) and (9) terminates September 30, 2023--sec. 8, Ch. 243, L. 2017.)”

**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) The applicant is not required to prove a lack of adverse effect for any water right identified on a written consent to approval filed pursuant to subsection (19) in connection with an application.]

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection[s (1)(c) and] (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. For purposes of this section, adverse effects analysis is specific to the proposed change in appropriation right and a determination that water is not legally available pursuant to 85-2-311 does not necessarily mean that an adverse effect will occur.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) 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. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(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 permit holder 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~~ *existing legal demands of water rights* on the state water supply, as well as projected ~~demands for water~~ *legal demands of water rights* 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~~ *existing legal demands of water rights* 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[, except for any right for which a written consent to approval has been filed pursuant to subsection (19) in connection with the application].

(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.

(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; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the 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.

(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion 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 point of diversion 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 point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:

(A) cease appropriation of water from the replacement point of diversion 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 (18) do not apply to an appropriation right abandoned under 85-2-404.

(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).

(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will 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 Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.

[(19) The department may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a change in appropriation right.] (Bracketed language in subsections (1)(c), (2), (7), and (19) terminates September 30, 2023--sec. 8, Ch. 243, L. 2017.)”

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

Approved April 30, 2021

## CHAPTER NO. 318

[SB 167]

AN ACT REMOVING THE TERMINATION DATES FOR MEDICAL MALPRACTICE-RELATED PROVISIONS OF THE HEALTH AND ECONOMIC LIVELIHOOD PARTNERSHIP ACT; AMENDING SECTIONS 25-3-106 AND 27-2-205, MCA; AMENDING SECTION 28, CHAPTER 368, LAWS OF 2015, AND SECTION 38, CHAPTER 415, LAWS OF 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 25-3-106, MCA, is amended to read:

**“25-3-106. (Temporary) Medical malpractice claims – time limit.** A plaintiff in a medical malpractice action shall accomplish service within 6 months after filing the complaint. If the plaintiff fails to do so, the court, on motion or on its own initiative, shall dismiss the action without prejudice unless the defendant has made an appearance. ~~(Terminates June 30, 2025--sec. 38, Ch. 415, L. 2019.)”~~

**Section 2.** Section 27-2-205, MCA, is amended to read:

**“27-2-205. (Temporary) Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a physician or surgeon, physician assistant, dentist, dental hygienist, registered nurse, advanced practice registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, must, except as provided in subsection (2), be commenced within 2 years after the date of injury or within 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may an action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any period during which there has been a failure to disclose any act, error, or omission upon which an action is based and that is known to the defendant or through the use of reasonable diligence subsequent to the act, error, or omission would have been known to the defendant.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian. ~~(Terminates June 30, 2025--sec. 38, Ch. 415, L. 2019.)~~

~~**27-2-205. (Effective July 1, 2025) Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, must, except as provided in subsection (2);~~

be commenced within 3 years after the date of injury or within 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may an action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any period during which there has been a failure to disclose any act, error, or omission upon which an action is based and that is known to the defendant or through the use of reasonable diligence subsequent to the act, error, or omission would have been known to the defendant.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian."

**Section 3.** Section 28, Chapter 368, Laws of 2015, is amended to read:

**"Section 28. Termination.** (1) ~~[This act]~~ *Except as provided in subsection (2), [this act] terminates June 30, 2019 2025.*

(2) *[Sections 19 and 21] do not terminate.*

(3) The department may reapply for the same waiver received to implement the Montana Health and Economic Livelihood Partnership Act program if the waiver expires before June 30, 2019 2025."

**Section 4.** Section 38, Chapter 415, Laws of 2019, is amended to read:

**"Section 38.** Section 28, Chapter 368, Laws of 2015, is amended to read:

**"Section 28. Termination.** (1) ~~[This act]~~ *Except as provided in subsection (2), [this act] terminates June 30, 2019 June 30, 2025.*

(2) *[Sections 19 and 21] do not terminate.*

(3) The department may reapply for the same waiver received to implement the Montana Health and Economic Livelihood Partnership Act program if the waiver expires before June 30, 2019 June 30, 2025."

**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.** [This act] is effective on passage and approval.

Approved April 30, 2021

## CHAPTER NO. 319

[SB 174]

AN ACT REVISING LAWS RELATED TO THE REVIEW AND APPROVAL OF A SUBDIVISION; PROVIDING ADDITIONAL CLARIFICATION OF THE CONDITIONS FOR SUBDIVISION APPROVAL; PROVIDING THAT THE CONDITIONS OF A CONDITIONALLY APPROVED SUBDIVISION MUST BE CLEARLY DEFINED; AMENDING SECTIONS 76-3-501, 76-3-504, 76-3-604, 76-3-608, AND 76-3-620, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 76-3-501, MCA, is amended to read:

**"76-3-501. Local subdivision regulations.** (1) The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

(a) the orderly development of their jurisdictional areas;

- (2)(b) the coordination of roads within subdivided land with other roads, both existing and planned;
- (3)(c) the dedication of land for roadways and for public utility easements;
- (4)(d) the improvement of roads;
- (5)(e) the provision of adequate open spaces for travel, light, air, and recreation;
- (6)(f) the provision of adequate transportation, water, and drainage;
- (7)(g) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- (8)(h) the avoidance or minimization of congestion; and
- (9)(i) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

(2) *Any action that is not specifically prohibited in the conditions of subdivision approval is specifically allowed or is otherwise subject to additional restrictions that may be provided in the governing documents of the subdivision and applicable zoning regulations.*

(3) *If a local government has historically interpreted and enforced or chosen not to enforce a condition of subdivision approval to the benefit of a parcel owner, the local government may not undertake a different interpretation or enforcement action against a similarly situated parcel owner in the same subdivision.”*

**Section 2.** Section 76-3-504, MCA, is amended to read:

**“76-3-504. Subdivision regulations – contents.** (1) The subdivision regulations adopted under this chapter must comply with the requirements provided for in 76-3-501 and, at a minimum:

- (a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);
- (b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;
- (c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;
- (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- (e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.
- (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
- (g) prescribe standards for:
  - (i) the design and arrangement of lots, streets, and roads;
  - (ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted;

(r) require that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision;

(s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple spaces for recreational camping vehicles or mobile homes.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.”

**Section 3.** Section 76-3-604, MCA, is amended to read:

**“76-3-604. Review of subdivision application – review for required elements and sufficiency of information.** (1) (a) A subdivision application is considered to be received on the date of delivery to the reviewing agent or agency and when accompanied by the review fee submitted as provided in 76-3-602.

(b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider’s written permission, the subdivider’s agent of the reviewing agent’s or agency’s determination. If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider’s agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider’s written permission, the subdivider’s agent of the reviewing agent’s or agency’s determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider’s agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider’s agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

(6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

(7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

(10) *Unless otherwise provided by law, the governing body may review but does not have approval authority of the governing documents of the subdivision or amendments to the governing documents unless the governing documents directly and materially impact a condition of subdivision approval.*

**Section 4.** Section 76-3-608, MCA, is amended to read:

**"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within

the subdivision having been designated as wildland-urban interface parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the *specific, documentable, and clearly defined* impact on ~~agriculture, agricultural water user facilities~~ *agriculture, agricultural water user facilities*, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter;

and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). *Pursuant to 76-3-620, The* the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the ~~unmitigated~~ impacts of a proposed development may be ~~unacceptable~~ *deemed unmitigable* and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4) *and consistent with 76-3-620*, a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the

owner of the private property authorizes the encroachment. For the purposes of this section, “well isolation zone” has the meaning provided in 76-4-102.

(9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body’s review, the comment or opinion may be included in the governing body’s written statement under 76-3-620 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

(10) Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of this chapter must be based on the record as a whole. The governing body’s findings of fact must be sustained unless they are arbitrary, capricious, or unlawful.”

**Section 5.** Section 76-3-620, MCA, is amended to read:

**“76-3-620. Review requirements – written statement.** (1) In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that:

(a) must be provided to the applicant;;

(b) ~~that~~ must be made available to the public; ~~and that;~~

(1)(c) includes information regarding the appeal process for the denial or imposition of conditions;

(2)(d) identifies the regulations and statutes that are used in reaching the decision ~~to deny or impose conditions~~ and explains how they apply to the *basis of the decision to deny or impose conditions*;

(3)(e) provides the facts and conclusions that the governing body relied upon in making *its the* decision ~~to deny or impose conditions~~ and references documents, testimony, or other materials that form the basis of the decision; and

(4)(f) ~~provides~~ *identifies* the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

(2) *If the governing body conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in 76-3-608(3) that forms the basis for the condition.”*

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

Approved April 30, 2021

## CHAPTER NO. 320

[SB 199]

AN ACT PROVIDING FOR THE MONTANA LOCAL FOOD CHOICE ACT; EXEMPTING CERTAIN HOMEMADE FOOD PRODUCERS FROM FOOD LICENSURE, PERMITTING, CERTIFICATION, PACKAGING, LABELING, AND INSPECTION REGULATIONS AS WELL AS CERTAIN OTHER STANDARDS AND REQUIREMENTS; PROVIDING EXCEPTIONS TO CERTAIN REQUIREMENTS; REVISING RULEMAKING AUTHORITY;

AMENDING SECTIONS 30-12-301, 50-31-104, 50-31-106, 50-31-108, 50-31-201, 50-50-301, 81-2-102, 81-2-105, 81-9-201, 81-9-218, 81-21-101, 81-21-102, 81-21-103, 81-22-101, 81-22-102, 81-22-201, 81-22-303, 81-22-304, 81-22-401, 81-22-405, 81-22-412, 81-22-413, 81-22-416, 81-22-420, 81-22-421, 81-22-503, 81-23-103, 81-23-401, AND 81-23-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Short title – purpose.** (1) This chapter may be cited as the “Montana Local Food Choice Act”.

(2) The purpose of this act is to allow for the sale and consumption of homemade food and food products and to encourage the expansion of agricultural sales by ranches, farms, and home-based producers and the accessibility of homemade food and food products to informed end consumers by:

- (a) facilitating the purchase and consumption of fresh and local agricultural products;
- (b) enhancing the agricultural economy; and
- (c) providing Montana citizens with unimpeded access to healthy food from known sources.

**Section 2. Definitions.** For purposes of this chapter, the following definitions apply:

(1) “Deliver” means to transfer a product as a result of a transaction between a producer and an informed end consumer. The action may be performed by the producer or the producer’s designated agent at a farm, ranch, home, office, traditional community social event, or another location agreed to between the producer or agent and the informed end consumer.

(2) “Home consumption” means:

- (a) the consumption of food or a food product in a private home; or
- (b) the consumption of food or a food product from a private home.

(3) “Homemade” means food or a food product that is prepared in a private home and that is not licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(4) “Informed end consumer” means a person who is the last person to purchase a product, does not resell the product, and has been informed that the product is not licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(5) (a) “Producer” means a person who harvests, produces, or prepares a product that may be consumed as homemade food or a homemade food product. The term includes a person operating a small dairy, as defined in 81-21-101.

(b) The term does not include the entities listed in [section 3(1)(c)].

(6) “Small dairy” means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk.

(7) “Traditional community social event” means an event at which people gather as part of a community for the benefit of those gathering or for the benefit of the community, including but not limited to a:

- (a) wedding;
- (b) funeral;
- (c) church or religious social;
- (d) school event;
- (e) farmer’s market;
- (f) potluck;
- (g) neighborhood gathering;
- (h) club meeting or social; or

(i) youth or adult outdoor club or sporting event.

(8) "Transaction" means an exchange of buying and selling, including the transfer of a product by delivery.

**Section 3. Exemptions from regulations – transactions – information required – exceptions.** (1) (a) A state agency or an agency of a political subdivision of the state may not require licensure, permitting, certification, packaging, labeling, testing, sampling, or inspection that pertains to the preparation, serving, use, consumption, delivery, or storage of homemade food or a homemade food product under this chapter.

(b) This chapter does not preclude an agency from providing assistance, consultation, or inspection requested by a producer.

(c) A producer as defined in this chapter is not:

(i) a retail food establishment, a cottage food operation, or a temporary food establishment, as each term is defined in 50-50-102;

(ii) a wholesale food manufacturing establishment, as defined in 50-57-102; or

(iii) a dairy or a manufactured dairy products plant, as defined in 81-22-101.

(d) A producer is not subject to labeling, licensure, inspection, sanitation, or other requirements or standards of 30-12-301; Title 50, chapter 31; or Title 81, chapters 2, 9, 21, 22, or 23.

(2) Transactions pursuant to this chapter:

(a) must be directly between the producer and the informed end consumer;

(b) must be only for home consumption or consumption at a traditional community social event; and

(c) must occur only in this state and may not involve interstate commerce.

(3) Except as provided in subsection (7), a producer shall inform an end consumer that any homemade food or homemade food product sold through ranch, farm, or home-based sales pursuant to this chapter has not been licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(4) Except for raw, unprocessed fruit and vegetables, homemade food shall not be sold or used in a retail food establishment, as defined in 50-50-102, unless the food has been licensed, permitted, certified, packaged, labeled, and inspected as required by law.

(5) Except as provided in subsection (6) and pursuant to [sections 1 through 3], a producer may donate homemade food or homemade food products to a traditional community social event.

(6) A producer may not donate milk to a traditional community social event.

(7) (a) Except for a temporary food establishment subject to 50-50-120, meat or meat products processed at a state-licensed establishment or a federally approved meat establishment, by the producer, or by any third party may not be used in preparation of homemade food that is sold pursuant to a transaction provided for in [sections 1 through 3].

(b) Subsection (7)(a) does not apply to a producer, as defined in [section 2], who slaughters fewer than 1,000 poultry birds a year except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175. The poultry or poultry products must not be adulterated or misbranded.

(8) A small dairy shall:

(a) sample, test, or retest every 6 months for standard plate count, coliform count, and somatic cell count of milk or cream sold as homemade food pursuant to [sections 1 through 3];

(b) sample, test, or retest every year for brucellosis for every lactating cow, lactating goat, or lactating sheep that is part of the small dairy; and

(c) maintain records for 2 years of all previous samples, tests, or retests, which must be provided to the department of livestock if the department suspects the small dairy is causing a foodborne illness.

**Section 4.** Section 30-12-301, MCA, is amended to read:

**“30-12-301. Method of sale of commodities – general.** (1) Commodities in liquid form may be sold only by liquid measure or by weight, and, except as otherwise provided in parts 1 through 5, commodities not in liquid form may be sold only by weight, by measure of length or area, or by count. Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate information as to the quantity of commodity sold. This section does not apply to:

(a) commodities when sold for immediate consumption on the premises where sold;

(b) vegetables when sold by the head or bunch;

(c) commodities in containers standardized by a law of this state or by federal law;

(d) commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure;

(f) unprocessed vegetable and animal fertilizer when sold by cubic measure; **or**

(g) cottage food products as defined in 50-50-102; *or*

(h) *homemade food or homemade food products sold pursuant to [sections 1 through 3].*

(2) The department may adopt reasonable rules necessary to ensure that amounts of commodity sold are determined in accordance with good commercial practice and are determined and represented as to be accurate and informative to all parties at interest.”

**Section 5.** Section 50-31-104, MCA, is amended to read:

**“50-31-104. Department authorized to adopt rules.** (1) The department may adopt rules for the efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(3) *The department may not establish rules related to enforcement of this chapter for homemade food or a homemade food product sold pursuant to [sections 1 through 3].*”

**Section 6.** Section 50-31-106, MCA, is amended to read:

**“50-31-106. Inspections and taking of samples authorized.** (1) The department or its authorized agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(a) inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

(b) securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample.

(2) The department shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

(3) *Pursuant to [sections 1 through 3], the department may not conduct inspections of or take samples from producers as defined in [section 2].*

**Section 7.** Section 50-31-108, MCA, is amended to read:

**“50-31-108. Regulations concerning additives.** (1) The department, upon its own motion or upon the petition of any interested party requesting that a rule be established, whenever public health or other considerations in the state require, is authorized to adopt, amend, or repeal rules, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions when the food additive or color additive is to be used solely for investigational or experimental purposes.

(2) A petitioner shall establish by data submitted to the department that a necessity exists for the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether the regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request is sufficient grounds to deny the request.

(3) In adopting, amending, or repealing rules relating to the substances, the department shall consider among other relevant factors the following, which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning the substance, including, when available:

(i) its chemical identity and composition;

(ii) a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling; and

(iii) all relevant data bearing on the physical or other technical effect and the quantity required to produce the effect;

(b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of the substance;

(c) the probable consumption of the substance in the diet of humans and animals taking into account any chemically or pharmacologically related substance in the diet;

(d) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate the safety of the substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) the substance in or on an article;

(ii) any substance formed in or on the article because of the use of the substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of the substance will serve a useful purpose.

(4) *The department may not establish rules related to food additives under this section for homemade food or a homemade food product sold pursuant to [sections 1 through 3].*

**Section 8.** Section 50-31-201, MCA, is amended to read:

**“50-31-201. Department authorized to adopt food standards.**

(1) Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall ~~promulgate~~ *adopt* regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, standard of quality, and/or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards ~~so promulgated~~ shall conform ~~so far as much~~ as practicable to the definitions and standards promulgated under authority of the federal act, or the department may ~~promulgate~~ *adopt* by reference the definitions and standards promulgated under authority of the federal act.

(4) *The department may not adopt food standards or regulations under this section for homemade food or a homemade food product sold pursuant to [sections 1 through 3].*

**Section 9.** Section 50-50-301, MCA, is amended to read:

**“50-50-301. Health officers and sanitarians to make investigations and inspections – training requirements.** (1) State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of retail food establishments once a year and make reports to the department as required under rules adopted by the department. An inspection may be conducted more often than once a year.

(2) A person conducting an inspection must be certified and have completed a food safety training program, such as the program administered by the national restaurant association educational foundation or its equivalent.

(3) (a) A cottage food operation is not subject to inspection under this section unless the state or local health officer is investigating a complaint based on an illness or an outbreak suspected to be directly related to cottage food products.

(b) A cottage food operation may request an inspection and pay the appropriate costs for that inspection on a voluntary basis.

(4) *A producer as defined in [section 2] selling homemade food or a homemade food product pursuant to [sections 1 through 3] is not subject to inspection under this section unless the state or local health officer is investigating a complaint based on an illness or an outbreak suspected to be directly related to that homemade food or homemade food product.”*

**Section 10.** Section 81-2-102, MCA, is amended to read:

**“81-2-102. Powers of department.** (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying

medium. The department may prescribe treatments and enforce sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect fees that the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees, the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees must be deposited in the enterprise fund account established in 81-2-116 for the use of the animal laboratory functions of the department.

(d) subject to subsection (2), adopt rules and orders that it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock in this state;

(e) (i) adopt rules and orders that it considers necessary or proper for the inspection, testing, and quarantine of all livestock and alternative livestock imported into this state; and

(ii) adopt rules and orders that it considers necessary or proper governing inspections and tests of livestock and alternative livestock intended for importation into this state to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock;

(f) adopt rules and orders that it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of 81-9-201, 81-20-101, 81-21-102, 81-21-103, part 1, 2, or 3 of this chapter, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement. *A producer as defined in [section 2] selling homemade food or a homemade food product pursuant to [sections 1 through 3] is not subject to the rules and orders adopted under this subsection (1)(f) as those relate to the licensure, permitting, certification, packaging, labeling, or inspection that pertains to the preparation, serving, use, consumption, delivery, or storage of homemade food or a homemade food product.*

(g) adopt rules and orders that seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable, the standards approved by the United States department of agriculture must be adopted.

(h) slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(i) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under 81-20-101, 81-21-102, 81-21-103, or part 1, 2, or 3 of this chapter;

(j) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) (a) As used in subsection (1)(d), "order" means a command, direction, or instruction issued by the department, board, or board's administrator in circumstances that clearly constitute an existing imminent peril to the public health, safety, or welfare or to animal health or welfare.

(b) An order under subsection (1)(d) may last no more than 5 years and may be altered or rescinded as necessary to address the circumstances set out in subsection (1)(d). An order may not be used to create a permanent program.

(c) As used in subsection (2)(b), "program" means a legislatively or administratively created function, project, or duty of an agency.

(3) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses."

**Section 11.** Section 81-2-105, MCA, is amended to read:

**"81-2-105. Authority of municipal corporations.** (1) Nothing in this title prevents the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, or dairy products located, sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this title delegated to the department and its officers or agents.

(2) *The governing activity authority of a municipal corporation may not enact or enforce ordinances pursuant to this section for producers as defined in [section 2] selling homemade food or a homemade food product pursuant to [sections 1 through 3]."*

**Section 12.** Section 81-9-201, MCA, is amended to read:

**"81-9-201. Meat establishment license – fees and renewals.** (1) *It Except as provided in [section 3], it is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry, including the operation of a mobile slaughter facility as defined in 81-9-217, or processing, storing, or wholesaling livestock or poultry products without having a license issued by the department. The department shall establish an annual fee for a*

license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302 and must be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

(3) Investor-owned equine slaughter or processing facilities must be licensed pursuant to this section.

(4) A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not more than \$500.”

**Section 13.** Section 81-9-218, MCA, is amended to read:

**“81-9-218. Exemptions.** (1) The following persons are exempt from 81-9-201, 81-9-216 through 81-9-220, and 81-9-226 through 81-9-236:

(a) a person who slaughters livestock or poultry or prepares or processes livestock or poultry products for the person’s own personal or household use; and

(b) a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment, burial, or disposal in a manner that would prevent the carcasses from being used as human food; and

(c) *a producer as defined in [section 2] who sells homemade food or slaughters fewer than 1,000 poultry birds a year pursuant to [section 3] except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175.*

(2) A person engaged in the custom slaughtering of livestock or poultry delivered by the owner for custom slaughter or a person engaged in the preparation of the carcasses and parts and meat food products of the livestock or poultry when slaughtered or prepared for exclusive use in the owner’s household by the owner or members of the owner’s household or the owner’s nonpaying guests or employees is exempt from 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 if the carcasses, parts, or meat food products or containers of the articles are:

(a) kept separate from carcasses, parts, or meat food products prepared for sale;

(b) plainly marked “Not for Sale” immediately after being slaughtered or prepared and remain plainly marked until delivered to the owner; and

(c) prepared and packaged in a sanitary manner and in a sanitary facility.”

**Section 14.** Section 81-21-101, MCA, is amended to read:

**“81-21-101. Definitions.** As used in this part, the following definitions apply:

(1) “Fluid milk plant” means a place where milk or cream is not produced but is purchased or collected and prepared for distribution to the consumer in liquid form.

(2) “Public consumption” means the use of milk or cream by the public for any purpose.

(3) *“Small dairy” means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk.”*

**Section 15.** Section 81-21-102, MCA, is amended to read:

**“81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption.** (1) ~~It~~ *Except for a small dairy, it is unlawful*

for the following businesses to operate in this state without first obtaining a license from the department:

(a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;

(b) a condensed, evaporated, or powdered milk plant;

(c) a fluid milk plant.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct the person's establishment in a sanitary manner. All license fees collected must be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The department shall establish license fees for the following facilities:

(a) a condensed, evaporated, or powdered milk factory;

(b) a fluid milk plant; and

(c) a dairy.

(5) A person violating this section is guilty of a misdemeanor."

**Section 16.** Section 81-21-103, MCA, is amended to read:

**"81-21-103. Exceptions of certain producers of dairy products.**

(1) The owners or operators of *small dairies*, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of dairy products are not required to procure a license from the department of public health and human services for the business of production, storage, or transportation of these food products.

(2) This section does not limit:

(a) the supervision or regulation by the department of public health and human services of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale at those facilities; or

(b) the duties imposed by law on the department of public health and human services to make sanitary rules for the eradication or control of an epidemic of human disease that may exist in a community."

**Section 17.** Section 81-22-101, MCA, is amended to read:

**"81-22-101. Definitions.** For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for that other person in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) “C.I.P.” means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(5) “Code of Federal Regulations” refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health and human services.

(6) “Cream” means the milk fat that rises to the surface when milk is allowed to stand or that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(7) “Creamery” means a place where butter is made for commercial purposes.

(8) “Culture” means the harmless lactic acid fermenting bacteria that are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and similar products.

(9) “Dairy” or “dairy farm” means a place where ~~one or more hooved mammals~~ *6 or more lactating cows, 11 or more lactating goats, 11 or more lactating sheep, or 11 or more of any lactating hooved mammals* are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(10) The term “department”, unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(11) “Directly acidified” and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(12) “Filled dairy products” means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(13) “French ice cream”, “French custard ice cream”, and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(14) “Grading” means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(15) “Ice cream” is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(16) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsections (21)(a)(iii) through (21)(a)(xii) are made.

(17) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(18) "Manufactured dairy product" means an item enumerated in subsection (21) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, manufactured dairy product includes but is not limited to:

- (a) ice cream or its mix;
- (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;
- (c) sherbets of all kinds or their mixes;
- (d) animal or vegetable fat frozen desserts or their mixes;
- (e) frozen confections or their mixes when made in a manufactured dairy products plant;
- (f) water ices or their mixes;
- (g) frozen dessert sandwiches, bars, cones, and similar novelties;
- (h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;
- (i) ice milk or its mix;
- (j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;
- (k) sour cream when cultured or directly acidified;
- (l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;
- (m) buttermilk, cultured or from churned butter or directly acidified;
- (n) butter;
- (o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

(19) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or that manufactures those products listed in subsection (21). If only products of semblance or imitation of dairy products are made, the plant is not considered a manufactured dairy products plant.

(20) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy hooved mammals located in modified accredited areas and modified certified areas or from hooved mammals in herds fully accredited as tuberculosis-free by the United States department of agriculture or in the process of being accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(21) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

- (i) butter;
- (ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;

- (iii) ice cream or its mix;
- (iv) frozen dessert or its mix;
- (v) sherbets of all kinds or their mixes;
- (vi) frozen ice cream bars, sandwiches, cones, and similar novelties;
- (vii) frozen desserts or products made in the semblance or imitation of frozen dessert;
- (viii) frozen confections or their mixes;
- (ix) water ices or their mixes;
- (x) ice milk or its mix;
- (xi) French ice cream, French custard, or their mixes;
- (xii) frozen custard or its mix and frozen yogurt;
- (xiii) yogurt, flavored yogurt, and low-fat yogurt;
- (xiv) sour cream, either cultured or directly acidified;
- (xv) cream cheese, either cultured or directly acidified;
- (xvi) buttermilk, either cultured, from churned butter, or directly acidified;
- (xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;
- (xviii) dry or powdered milk; and
- (xix) condensed milk products.

(b) The items specified in subsection (21)(a) must conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products must be in accordance with the Montana Food, Drug, and Cosmetic Act.

(22) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(23) "Misabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(24) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(25) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment that is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners must be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process that has been recognized by the United States public health service to be equally effective and that is approved by the department.

(26) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(27) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(28) "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(29) “Small dairy” means a place where no more than 5 lactating cows, 10 lactating goats, 10 lactating sheep, or 10 other lactating hoofed mammals are kept for producing milk.

~~(29)~~(30) “Testing”, “test”, “tested”, and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

~~(30)~~(31) “Water ice” means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients.”

**Section 18.** Section 81-22-102, MCA, is amended to read:

**“81-22-102. General authority of department.** (1) The department may regulate and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department may regulate and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products or of products made or sold in the semblance or imitation of dairy products in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant.

(2) The department may adopt minimum standards for the production, transportation, grading, testing, use, processing, packaging, and storage of milk and cream used for manufacturing purposes and of manufactured dairy products.

(3) The department shall adopt rules and establish fees for licenses for selling or producing milk as required by 81-23-202.

(4) *The department may not establish fees, rules, or standards under this chapter for small dairies selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3].*”

**Section 19.** Section 81-22-201, MCA, is amended to read:

**“81-22-201. License required to operate manufactured dairy products plant.** (1) It shall be unlawful for any person to operate a manufactured dairy products plant, concentrated, condensed, or evaporated milk and/or cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes, water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt, or frozen dessert manufacturing plant without first obtaining a license from the department.

(2) Any manufactured dairy products plant or dairy which undergoes a change of ownership shall be considered a new plant or dairy for relicensing purposes, provided that changes of ownership shall not be construed to include changes of stockholders.

(3) *A small dairy selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3] is exempt from the licensing requirements of this section.*”

**Section 20.** Section 81-22-303, MCA, is amended to read:

**“81-22-303. Sampling and testing by department.** (1) *Except as provided in subsection (2),* the department shall have the authority to sample, test, ~~and/or~~ retest samples of milk or cream or their products at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

(2) *The department may not sample, test, or retest milk or cream sold as homemade food pursuant to [sections 1 through 3].*”

**Section 21.** Section 81-22-304, MCA, is amended to read:

**“81-22-304. Department’s right of entry into dairy or plants for inspection – penalty.** (1) The department or its authorized agent has the right of entry during normal business hours, including Sundays and holidays, into a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant, cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured, sold, offered for sale, or stored while in transit to inspect the dairy or plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person to interfere with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain samples.

(2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than \$50 and not more than \$500 or to imprisonment in the county jail for not less than 1 or more than 30 days or both such fine and imprisonment.

(3) *The department’s right of entry under this section does not apply to small dairies selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3].”*

**Section 22.** Section 81-22-401, MCA, is amended to read:

**“81-22-401. Grading of milk – condemnation of unsafe milk.** ~~Milk~~ *Except for milk or cream sold as homemade food or a homemade food product pursuant to [sections 1 through 3],* milk or cream purchased for use in milk plants or for use in a manufactured dairy product in this state shall be graded by licensed graders, weighers, and samplers. It is unlawful to sell, purchase, or use milk or cream for a food purpose if the milk or cream is found to be musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, substances, or excessive bacteria. The milk or cream grader or the department shall condemn the milk or cream and may add to the milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection.”

**Section 23.** Section 81-22-405, MCA, is amended to read:

**“81-22-405. Labeling of cheese containers.** ~~It shall be~~ *Except for a small dairy selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3],* it is unlawful and punishable as a misdemeanor for any person to offer for sale, expose for sale, or sell any cheese in any container or wrapper unless such container or wrapper bears a legible label or inscription indicating the net weight, type or style of cheese, and the manufacturer’s or distributor’s name and address or plant number.”

**Section 24.** Section 81-22-412, MCA, is amended to read:

**“81-22-412. Manufactured products to conform to standards of identity.** ~~It shall be~~ *Except for a small dairy selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3],* it is unlawful for any person to manufacture, display, transport, sell, or offer for sale in Montana as a manufactured dairy product any substance or product which does not conform to the standards of identity for such product as defined in the Code of Federal Regulations or to the standard of identity established by the department.”

**Section 25.** Section 81-22-413, MCA, is amended to read:

**“81-22-413. Pasteurization required.** (1) All milk and cream used in the manufacture of any dairy product or products made in semblance or imitation of dairy products sold, offered for sale, purveyed, stored, displayed, or transported in Montana must be pasteurized. However, cheese held, stored, or aged for at least 60 days at not less than 35 degrees F is not required to be

made from pasteurized milk or cream but must be labeled “made from raw or unpasteurized milk or unpasteurized cream”, as the case may be. Other cultured raw or unpasteurized dairy products that can be made safe by aging must be similarly aged and labeled as required above.

(2) *The pasteurization and labeling requirements of this section do not apply to milk or cream sold as homemade food or a homemade food product pursuant to [sections 1 through 3].*”

**Section 26.** Section 81-22-416, MCA, is amended to read:

**“81-22-416. Milk and manufactured dairy products to conform to standards.** *Except for milk or cream sold as homemade food or a homemade food product pursuant to [sections 1 through 3], all milk and cream used in manufactured dairy products, and the manufactured dairy products, shall conform to the standards of purity, quality, and wholesomeness as provided in this chapter or in the regulations promulgated under the authority of this chapter.*”

**Section 27.** Section 81-22-420, MCA, is amended to read:

**“81-22-420. Labeling of animal or vegetable fat contents on frozen desserts.** (1) Any frozen dessert made in the semblance of or in imitation of ice cream in this chapter, which contains any amount of animal fat (other than milk fat) or vegetable fat or oil (other than any such fat or oil which is naturally present in any flavoring ingredient), shall be labeled as an animal fat product or vegetable fat product, or a combination of both, as the case may be. Such animal fat or vegetable fat products shall be manufactured from a pasteurized mix which has been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or exchange, or selling such animal fat or vegetable fat frozen desserts shall be subject to the sanitary, reporting, and licensing regulations of this chapter and of the regulations promulgated under the authority of this chapter.

(2) No representation shall be made by statement, word, grade designation, design, symbol, device, or in any other manner on any container, package, or wrapper or on any advertising media that such animal fat or vegetable fat product, or combination thereof, is ice cream, sherbet, or any of their low-fat counterparts or derivatives or any other products which are prohibited from containing animal or vegetable fats.

(3) The container, package, or wrapper containing such animal fat or vegetable fat frozen dessert shall be clearly and plainly marked, labeled, or printed on the outside in boldfaced letters with the words, “animal fat product”, “vegetable fat product”, “animal-vegetable fat product”, or “vegetable-animal fat product”, as the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils, except that spices, flavorings, or colorings may be designated as such without naming each.

(4) *The labeling requirements of this section do not apply to milk or cream sold as homemade food or a homemade food product pursuant to [sections 1 through 3].*”

**Section 28.** Section 81-22-421, MCA, is amended to read:

**“81-22-421. Labeling on manufactured dairy products to conform to requirements.** *Except for milk or cream sold as homemade food or a homemade food product pursuant to [sections 1 through 3], labeling on manufactured dairy products must conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements that are adopted by the department or the department of public health and human services.*”

**Section 29.** Section 81-22-503, MCA, is amended to read:

**“81-22-503. Buyers and plants to make records available to department.** (1) Persons, including cooperatives, who buy or sell milk or

cream on the basis of butterfat, protein, solids, or other component content of milk or cream shall make available to the department, on its request, records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

(2) A manufactured dairy product plant, on request by the department, shall make available production records of dairy manufactured products covered by this chapter and manufactured products made in semblance or imitation of these dairy products.

(3) *Small dairies selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3] are exempt from the recordkeeping requirements of this section.*

**Section 30.** Section 81-23-103, MCA, is amended to read:

**“81-23-103. General powers of department and board.** (1) *The Except for milk produced from a small dairy as defined in 81-21-101, the board shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. The board shall conduct hearings and make determinations under this chapter and under board rules and orders promulgated pursuant to this chapter. This chapter does not affect the status, force, or operation of any provision of public health laws, county board of health rules, or municipal ordinances for the promotion or protection of the public health.*

(2) The department may cooperate with the department of public health and human services, a county or city board of health, or the department of agriculture in enforcing this chapter.

(3) The department shall assist the board by investigating all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and by bringing proceedings to enforce the orders of the board. The department, in exercising its enforcement duties, may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter. The department may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

(4) The department shall provide staff to the board as provided in 2-15-121 to assist in technical, enforcement, and regulatory activities.”

**Section 31.** Section 81-23-401, MCA, is amended to read:

**“81-23-401. Entry, inspection, and investigation.** *The Except for the premises of a small dairy as defined in 81-21-101, the department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter.*”

**Section 32.** Section 81-23-405, MCA, is amended to read:

**“81-23-405. Violations made misdemeanors – penalties.** (1) *A Except for a person operating a small dairy as defined in 81-21-101, a person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the board as required by this chapter or who violates a*

lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding \$600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, must be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter."

**Section 33. 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].

**Section 34. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 2021

## CHAPTER NO. 321

[SB 206]

AN ACT REVISING LAWS RELATED TO THE QUALITY EDUCATOR LOAN ASSISTANCE PROGRAM; REVISING THE TIMING OF THE ANNUAL REPORT OF THE BOARD OF PUBLIC EDUCATION FOR THE PROGRAM; AND AMENDING SECTION 20-4-503, MCA.

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

**Section 1.** Section 20-4-503, MCA, is amended to read:

**"20-4-503. Critical quality educator shortage areas – impacted schools.** (1) The board of public education, in consultation with the office of public instruction, shall:

(a) maintain and make publicly available a current list of impacted schools; and

(b) based on reporting by impacted schools or school districts in which impacted schools are located, identify within each impacted school, critical quality educator shortage areas under 20-4-502(1)(a). The board of public education shall also establish a process for impacted schools to report and qualify, no later than 5 days after submission of a written report on a form developed by the board, a current vacancy for a critical quality educator shortage area under the criteria set forth in 20-4-502(1)(b). Critical quality educator shortage areas qualifying under 20-4-502(1)(b) are eligible for loan repayment assistance independent of the report under subsection (2) of this section.

(2) The board of public education shall publish by ~~December~~ *February* 1 an annual report listing the critical quality educator shortage areas under 20-4-502(1)(a) in each impacted school. The report must apply to the school year that begins July 1 following the publication of the report in order to assist recruitment by impacted schools. ~~For the school year beginning July 1, 2019, eligibility for the program based on the criteria under 20-4-502(1)(a) must be governed by the report adopted by the board of public education by December 1, 2019.~~

(3) A quality educator working at an impacted school in a critical quality educator shortage area is eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under this part. If a quality educator is eligible for loan assistance and remains employed in

the same impacted school or another impacted school within the same school district and in the same critical quality educator shortage area for which the quality educator was originally eligible, the quality educator remains eligible for up to 3 years of state-funded loan repayment assistance and an additional 1 year of loan repayment assistance funded by the impacted school or the district under which the impacted school is operated pursuant to 20-4-504(2). Both state-funded and locally funded loan repayment assistance under this section *is are* exempt from taxation as specified in 15-30-2110(14).”

Approved April 30, 2021

## CHAPTER NO. 322

[SB 213]

AN ACT REVISING THE PUBLIC SERVICE COMMISSION APPEALS PROCESS IN CONTESTED CASES TO CONFORM WITH THE PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 69-3-308 AND 69-3-330, MCA; REPEALING SECTIONS 69-3-401, 69-3-402, 69-3-403, 69-3-404, AND 69-3-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 69-3-308, MCA, is amended to read:

**“69-3-308. Disclosure of taxes and fees paid by customers of public utility – automatic rate adjustment and tracking for taxes and fees.**

(1) A public utility may separately disclose in a customer’s bill the amount of state and local taxes and fees assessed against the public utility that the customer is paying.

(2) (a) (i) [Except as provided in 15-72-601,] the commission shall allow a public utility to file rate schedules containing provisions for the automatic adjustment and tracking of Montana state and local taxes and fees, except state income tax, paid by the public utility. The resulting rate schedule changes must include:

(A) adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees;

(B) retroactive tax adjustments; and

(C) adjustments related to the resolution of property taxes paid under protest.

(ii) The rate schedules must include provisions for annual rate adjustments, including both tax increases and decreases.

(b) The amended rates must automatically go into effect on January 1 following the date of change in taxes paid on an interim basis, subject to any adjustments determined in subsection (2)(c).

(c) The amended rate schedule must be filed with the commission on or before the effective date of the change in taxes paid, and if the commission determines that the revised rate schedule is in error, the commission may, within 45 days of receipt of the revised rate schedule, ask for comment and order the public utility to address any errors or omissions including, if necessary, any refunds due customers.

(d) Failure of the commission to issue an order pursuant to subsection (2)(c) is considered approval on the part of the commission.

(e) A public utility may challenge an order issued by the commission under subsection (2)(c) in accordance with the provisions of ~~69-3-401 through 69-3-405~~ *2-4-701 through 2-4-711.*”

**Section 2.** Section 69-3-330, MCA, is amended to read:

**“69-3-330. Decision by commission.** (1) If, upon ~~such a~~ hearing and due investigation, the rates, tolls, charges, schedules, or joint rates are found to be unjust, unreasonable, or unjustly discriminatory or to be preferential or otherwise in violation of the provisions of this chapter, the commission may fix and order substituted ~~therefor such~~ *the* rates, tolls, charges, or schedules as are just and reasonable.

(2) If the commission determines that a rate, toll, or charge has been collected in violation of 69-3-305(1)(b), the commission may order refunds or credits as specified in 69-3-305(3).

(3) If the commission finds that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this chapter or that the service is inadequate or any reasonable service cannot be obtained, the commission may substitute ~~therefor~~ other regulations, measurements, practices, services, or acts and make ~~such an~~ order relating ~~thereto to it~~ as is just and reasonable.

(4) In any decision ordering a change in the rates ~~which that~~ may be charged for electricity or natural gas, the commission shall list each expenditure submitted by the utility for allowance as an operating cost ~~which that~~ is disallowed by the commission as an element of operating costs. The list of disallowed expenditures ~~shall must~~ appear in the written decision of the commission and ~~shall must~~ itemize each expenditure by amount, category, and purpose.

(5) *A party in interest who is aggrieved by a commission-contested case decision may petition for judicial review pursuant to the Montana Administrative Procedure Act in accordance with Title 2, chapter 4, part 7.”*

**Section 3. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 69-3-401. Effective date of commission orders.
- 69-3-402. Action to challenge commission order.
- 69-3-403. Injunctive relief.
- 69-3-404. Review confined to record -- exceptions.
- 69-3-405. Appeal of court decision.

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

Approved April 30, 2021

## CHAPTER NO. 323

[SB 216]

AN ACT GENERALLY REVISING LAWS RELATED TO REQUIRING HEALTH INSURANCE ISSUERS TO PROVIDE PARITY COMPLIANCE REPORTING; REQUIRING IDENTIFICATION OF NONQUANTITATIVE TREATMENT LIMITATIONS; REQUIRING THE REPORTING OF ANALYSIS RESULTS; AMENDING SECTIONS 33-22-702 AND 33-35-306, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Parity compliance records.** A health insurance issuer that issues, modifies, or renews individual or group health insurance coverage that provides mental health or substance use disorder benefits shall submit a report to the commissioner on or before April 1 of the year following [the effective date of this act], and upon request of the commissioner for each year thereafter, that

complies with the mental health and substance use disorder parity analysis requirements of 42 U.S.C. 300gg-26(a)(8).

**Section 2.** Section 33-22-702, MCA, is amended to read:

**“33-22-702. Definitions.** For purposes of this part, the following definitions apply:

(1) “Inpatient benefits” are as set forth in 33-22-705.

(2) “*Mental health benefits*” means benefits with respect to items or services for mental health conditions, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Any condition defined by the plan or coverage as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice, including but not limited to the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*.

(~~2~~)(3) “Mental health treatment center” means a treatment facility organized to provide care and treatment for mental illness or severe mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by a qualified health care provider and a treatment facility that is:

- (a) licensed as a mental health treatment center by the state;
- (b) funded or eligible for funding under federal or state law; or
- (c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(~~3~~)(4) (a) “Mental illness” means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:

- (i) present distress or a painful symptom;
- (ii) a disability or impairment in one or more areas of functioning; or
- (iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

- (i) a developmental disorder;
- (ii) a speech disorder;
- (iii) a psychoactive substance use disorder;
- (iv) an eating disorder, except for bulimia and anorexia nervosa; or
- (v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania.

(~~4~~)(5) “Outpatient benefits” are as set forth in 33-22-705.

(~~5~~)(6) “Qualified health care provider” means a person licensed as a physician, psychologist, social worker, clinical professional counselor, marriage and family therapist, or addiction counselor or another appropriate licensed health care practitioner.

(~~6~~)(7) “Severe mental illness” means the following disorders as defined by the American psychiatric association:

- (a) schizophrenia;
- (b) schizoaffective disorder;
- (c) bipolar disorder;
- (d) major depression;
- (e) panic disorder;
- (f) obsessive-compulsive disorder; and
- (g) autism.

(7)(8) (a) “Substance use disorder” means the uncontrollable or excessive use of an addictive substance, including but not limited to alcohol, morphine, cocaine, heroin, opium, cannabis, barbiturates, amphetamines, tranquilizers, or hallucinogens, and the resultant physiological or psychological dependency that develops with continued use of the addictive substance and that requires medical care or other appropriate treatment as determined by a licensed addiction counselor or other appropriate medical practitioner.

(9) “*Substance use disorder benefits*” means benefits with respect to items or services for substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice, including but not limited to the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*.

(8)(10) “Substance use disorder treatment center” means a treatment facility that:

(a) provides a program for the treatment of substance use disorders pursuant to a written treatment plan approved and monitored by a qualified health care provider; and

(b) is licensed or approved by the department of public health and human services under 53-24-208 or is licensed or approved by the state where the facility is located.”

**Section 3.** Section 33-35-306, MCA, is amended to read:

**“33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) Title 33, chapter 2, part 23;

(e) 33-3-308;

(f) Title 33, chapter 7;

(g) Title 33, chapter 18, except 33-18-242;

(h) Title 33, chapter 19;

(i) 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and 33-22-153; and

(j) 33-22-512, 33-22-515, 33-22-525, and 33-22-526; and

(k) [section 1].

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked.”

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 7, and the provisions of Title 33, chapter 22, part 7, apply to [section 1].

**Section 5. Contingent effective date.** [This act] is effective on the date that the commissioner of securities and insurance certifies to the code commissioner that regulations or guidance implementing the mental health and substance use disorder parity analysis requirements of Title II of Division BB of the federal Consolidated Appropriations Act, 2021 (P.L. 116-260) is finalized. The commissioner of securities and insurance shall submit certification within 30 days of the occurrence of the contingency.

**Section 6. Applicability.** [This act] applies to insurance policies issued, modified, and renewed on or after [the effective date of this act].

Approved April 30, 2021

## CHAPTER NO. 324

[SB 233]

AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, 50-2-116, 75-1-1001, 75-2-105, 75-2-111, 75-2-112, 75-2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, 75-2-215, 75-2-217, 75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, 75-2-422, 75-2-428, 75-5-103, 75-5-106, 75-5-201, 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310, 75-5-311, 75-5-312, 75-5-313, 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, 75-5-502, 75-5-514, 75-5-515, 75-5-516, 75-5-802, 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-112, 75-6-116, 75-6-121, 75-6-131, 75-10-104, 75-10-112, 75-10-115, 75-10-221, 75-11-505, 75-11-508, 75-20-105, 75-20-216, 75-20-406, 75-20-407, 75-20-1001, 75-20-1203, 75-20-1205, 76-3-622, 76-4-1001, 80-15-105, 80-15-110, 80-15-201, 82-4-102, 82-4-112, 82-4-123, 82-4-129, 82-4-205, 82-4-207, 82-4-223, 82-4-226, 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, 82-4-254, 82-4-304, 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342, 82-4-371, 82-4-406, 82-4-422, 82-4-437, 82-4-445, 82-4-1001, AND 82-15-102, MCA; REPEALING SECTIONS 75-6-103, 75-10-106, 82-4-111, AND 82-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 7-13-4502, MCA, is amended to read:

**“7-13-4502. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Board of directors” means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

(2) ~~“Board of environmental review” means the board of environmental review as provided in 2-15-3502.~~

(3) ~~(2)~~ “Commissioners” means the board of county commissioners or the governing body of a city-county consolidated government.

(3) *“Department” means the department of environmental quality provided for in 2-15-3501.*

(4) “Family residential unit” means a single-family dwelling.

(5) “Fee-assessed units” means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes and manufactured homes as defined in 15-24-201.

(6) “Local water quality district” means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part.”

**Section 2.** Section 7-13-4513, MCA, is amended to read:

**“7-13-4513. Insufficient protest to bar proceedings – resolution creating district – power to implement local water quality program.**

(1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have approved a referendum as provided in 7-13-4512.

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the ~~board of environmental review department~~ pursuant to 75-5-311.”

**Section 3.** Section 7-13-4517, MCA, is amended to read:

**“7-13-4517. Powers and duties of board of directors.** The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the ~~board of environmental review department~~, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

(2) implement a local water quality program;

(3) administer the budget of the local water quality district;

(4) employ personnel;

(5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;

(6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to develop and implement an effective program;

(7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, or purchase, land necessary to implement the local water quality program;

(8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than \$5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.”

**Section 4.** Section 50-2-116, MCA, is amended to read:

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

- (a) appoint and fix the salary of a local health officer who is:
  - (i) a physician;
  - (ii) a person with a master’s degree in public health; or
  - (iii) a person with equivalent education and experience, as determined by the department;
- (b) elect a presiding officer and other necessary officers;
- (c) employ qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
  - (i) epidemiological tracking and investigation;
  - (ii) screening and testing;
  - (iii) isolation and quarantine measures;
  - (iv) diagnosis, treatment, and case management;
  - (v) abatement of public health nuisances;
  - (vi) inspections;
  - (vii) collecting and maintaining health information;
  - (viii) education and training of health professionals; or
  - (ix) other public health measures as allowed by law;
- (g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
- (h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;
  - (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;
  - (j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

(k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the ~~board of environmental review~~ *department of environmental quality* and must provide for appeal of variance decisions to the *department of environmental quality* as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

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

(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

(i) for the control of communicable diseases;

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

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

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

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

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

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

(vi) to implement the public health laws; and

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

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

**Section 5.** Section 75-1-1001, MCA, is amended to read:

“**75-1-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator’s prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator’s action;

(e) the violator’s good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 8, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) ~~The board of environmental review and the~~ department of environmental quality may, ~~for the statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

**Section 6.** Section 75-2-105, MCA, is amended to read:

**"75-2-105. Confidentiality of records.** (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the ~~board~~ or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the ~~board or~~ department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the ~~board or~~ department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section."

**Section 7.** Section 75-2-111, MCA, is amended to read:

**"75-2-111. Powers of board.** The board shall, subject to the provisions of 75-2-207:

(1) ~~adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:~~

(a) ~~any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

(b) ~~a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or~~

~~(c) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(2)(1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.~~

~~(3)(2) issue orders necessary to effectuate the purposes of this chapter;~~

~~(4) by rule require access to records relating to emissions;~~

~~(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;~~

~~(6)(3) have the power to issue orders under and in accordance with 42 U.S.C. 7419.”~~

**Section 8.** Section 75-2-112, MCA, is amended to read:

**“75-2-112. Powers and responsibilities of department.** (1) The department is responsible for the administration of this chapter.

(2) *Subject to the provisions of 75-2-207, the department shall:*

(a) *adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the department may not adopt permitting requirements or any other rule relating to:*

(i) *any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;*

(ii) *a commercial operation relating to the activities or equipment referred to in subsection (2)(a)(i) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or*

(iii) *forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;*

(b) *issue orders necessary to effectuate the purposes of this chapter;*

(c) *by rule require access to records relating to emissions; and*

(d) *by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter.*

~~(2)(3)~~ The department shall:

(a) *by appropriate administrative and judicial proceedings, enforce orders issued by the department or the board;*

(b) *secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;*

(c) *prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;*

(d) *encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;*

(e) *encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.*

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

~~(3)~~(4) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis.”

**Section 9.** Section 75-2-201, MCA, is amended to read:

**“75-2-201. Classifying and reporting air contaminant sources.**

(1) The ~~board~~ *department* may classify air contaminant sources ~~which that~~ in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics ~~which that~~ relate to air pollution and may require reporting for any such class or classes. ~~Such~~ *The* classifications ~~shall must~~ be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the ~~board~~ *department* may require reporting shall make reports containing ~~such any~~ information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution ~~which that~~ is available or reasonably capable of being assembled.”

**Section 10.** Section 75-2-202, MCA, is amended to read:

**“75-2-202. Board Department to set ambient air quality standards.**

(1) The ~~board~~ *department* shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides ~~shall must~~ be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage.”

**Section 11.** Section 75-2-203, MCA, is amended to read:

**“75-2-203. Board Department to set emission levels.** (1) The ~~board~~ *department* may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, ~~such those~~ levels, concentrations, or quantities ~~shall be are~~ controlling, and no emission in excess ~~there of shall be~~ *of those levels is* lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses ~~so may~~ require, the ~~board~~ *department* may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) ~~of this section.~~

(3) The ~~board~~ *department* may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the ~~board~~ *department* may, if necessary in some localities of this state, set more stringent standards by rule.”

**Section 12.** Section 75-2-204, MCA, is amended to read:

**“75-2-204. Rules relating to construction, installation, alteration, operation, or use.** The ~~board~~ *department* may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless the owner or operator ~~has obtained~~ *obtains* a permit under this part or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part.”

**Section 13.** Section 75-2-206, MCA, is amended to read:

**“75-2-206. Study of effects of sulfur dioxide on health and environment.** (1) To the extent that funds are available, the ~~board~~ *department* shall conduct an ongoing study in areas of Montana where there are major industrial sources of sulfur dioxide. The study ~~shall~~ *must* concentrate on the effects on human health and the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the ~~board~~ *department* may accept funds and grants from private and public sources.”

**Section 14.** Section 75-2-207, MCA, is amended to read:

**“75-2-207. State regulations no more stringent than federal regulations or guidelines – exceptions – procedure.** (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state law, the ~~board or~~ department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board or~~ department may incorporate by reference comparable federal regulations or guidelines.

(2) (a) The ~~board or~~ department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board or the~~ department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:

(A) protects public health or the environment;

- (B) can mitigate harm to the public health or the environment; and
- (C) is achievable with current technology.

(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for ~~the board's or~~ the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.

(c) (i) A person or entity affected by a rule of the ~~board or~~ department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the ~~board or~~ department to review the rule.

(ii) If the ~~board or~~ department determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board or~~ department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board or~~ department may charge a petition filing fee in an amount not to exceed \$250.

(iv) A person may also petition the ~~board or~~ department for a rule review under subsection (2)(a) if the ~~board or~~ department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board or~~ department rule.

(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

**Section 15.** Section 75-2-211, MCA, is amended to read:

**"75-2-211. Permits for construction, installation, alteration, or use.**

(1) The ~~board~~ *department* shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the ~~board~~ *department* finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the

application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The ~~board~~ *department* shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment;

and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the ~~board's~~ *department's* authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact

statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) Except as provided in 75-2-213, when the department approves or denies the application for a permit under this section, a person who is directly and adversely affected by the department's decision may request a hearing before the ~~board~~ board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative

Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ *board* under this subsection.

(11) Except as provided in 75-2-213:

(a) the department's decision on the application is not final until 15 days have elapsed from the date of the decision;

(b) the filing of a request for hearing does not stay the department's decision. However, the ~~board~~ *board* may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) upon granting a stay, the ~~board~~ *board* may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board~~ *board* determines that the permit was properly issued. When requiring an undertaking, the ~~board~~ *board* shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The ~~board~~ *department* shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The ~~board~~ *department* shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The ~~board~~ *department* shall provide, by rule, the basis upon which the department may extend by 15 days:

(a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The ~~board~~ *department* may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

**Section 16.** Section 75-2-212, MCA, is amended to read:

**"75-2-212. Variances – renewals – filing fees.** (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the ~~board~~ *department* for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application must be accompanied by information and data that the ~~board~~ *department* may require. The ~~board~~ *department* may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which an exemption is sought would produce hardship without equal or greater benefits to the public.

(2) An exemption or partial exemption may not be granted pursuant to this section except after public hearing on due notice and until the *board department* has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if a complaint is not made to the *board department* because of it or if, after the complaint has been made and duly considered at a public hearing held by the *board department* on due notice, the *board department* finds that renewal is justified. A renewal may not be granted except on application. An application must be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of the application in accordance with rules of the *board department*. A renewal pursuant to this subsection must be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be granted at the discretion of the *board department*. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the *board department* may obtain judicial review as provided by 75-2-411.

(5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or the person's property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are called facilities, who applies to the *board department* for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing, environmental impact statement, or appreciable investigation by the department is not necessary, the minimum filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the filing fees must be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter."

**Section 17.** Section 75-2-215, MCA, is amended to read:

**"75-2-215. Solid or hazardous waste incineration – additional permit requirements.** (1) Until the department has issued *issues* an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator ~~has provided~~ *provides* to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127, describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or modification;

(d) the department ~~has reached~~ *reaches* a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department ~~has issued~~ *issues* a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The ~~board~~ *department* may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

**Section 18.** Section 75-2-217, MCA, is amended to read:

**"75-2-217. Operating permit program – exemptions – general requirements – duration.** (1) The ~~board~~ *department* shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to

be administered by the department under this chapter. The *board department* shall promulgate rules that are consistent with the operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

(2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this section or operate any source required to have a permit under this section without having complied with the requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219, and this section.

(4) The *board department* may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the *board department* determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The *board department* may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The *board department* may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under 75-2-218 and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

(a) adequate procedures that are streamlined and reasonable for:

(i) expeditiously determining when applications are complete;

(ii) processing applications; and

(iii) expeditiously reviewing permit actions, including application renewals or revisions;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;

(f) deadlines for submitting permit applications and compliance plans that are not later than 12 months after the source becomes subject to the operating permit requirement;

(g) deadlines for submitting permit renewal applications that are not later than 6 months before expiration of the existing operating permit;

(h) requirements for compliance plans that must be submitted with permit and renewal applications, including schedules of compliance and progress reports;

(i) requirements and procedures for periodic certification of source compliance with permit requirements, including the prompt reporting of any deviations from permit requirements;

(j) requirements for submission of any plans, specifications, or other information that the department considers necessary under this section;

(k) conditions and procedures for the transfer of operating permits;

(l) requirements and procedures for suspension, modification, amendment, and revocation of permits by the department for cause, including

the modification or amendment of permits before renewal or termination to incorporate applicable limitations or requirements effective after permit issuance;

(m) requirements and procedures for incorporating into permits and permit renewals all applicable emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(n) requirements and procedures for permit modification and amendment;

(o) procedures for tracking activities conducted under general permits;

(p) requirements and procedures for issuing a single operating permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act.”

**Section 19.** Section 75-2-218, MCA, is amended to read:

**“75-2-218. Permits for operation – application completeness – action by department – application shield – review by board board.**

(1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department’s receipt of the application. The department may request additional information after a completeness determination has been made. The *board department* shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The *board department* may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The *board department* may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the ~~board~~ *board*. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing ~~before the board~~ under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the ~~board~~ *board* may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

(i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the ~~board~~ *board* may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board~~ *board* determines that the permit was properly issued. When requiring an undertaking, the ~~board~~ *board* shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the ~~board~~ *board* or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

**Section 20.** Section 75-2-219, MCA, is amended to read:

**"75-2-219. Permits for operation -- limitations.** Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the ~~board's~~ *department's* authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq.”

**Section 21.** Section 75-2-220, MCA, is amended to read:

**“75-2-220. Fees – special assessments – late payment assessments – credit.** (1) A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department fees set ~~by the board~~ pursuant to ~~75-2-111~~ 75-2-112 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:

(a) reviewing and acting upon a permit application or a registration or modifying, amending, or updating a permit or registration;

(b) implementing and enforcing the terms and conditions of a permit issued pursuant to this chapter or an administrative rule or other regulatory requirement adopted pursuant to this chapter. This does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable rules or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) For a permit or registration fee based on emissions, the fee must be based on emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The ~~board~~ *department* shall by rule provide for the annual review of all fees assessed for persons holding an operating permit issued under 75-2-217 and 75-2-218 to ensure the collection of revenue sufficient to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fees required under subsection (1), the ~~board~~ *department* may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, and emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the ~~board~~ *department* may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ *department* under this subsection.

(5) (a) If the permit holder or registrant fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit or registration consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit or registration after the permit holder or registrant has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The ~~board~~ department shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The ~~board~~ department may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the ~~board~~ department may by rule require the permit holder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the ~~board~~ department may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment ~~to the board~~ to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the ~~board~~ department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ board under this subsection (9).

(10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting and registration requirements of this chapter."

**Section 22.** Section 75-2-221, MCA, is amended to read:

**"75-2-221. Deposit of air quality permitting and registration fees.**

(1) All money collected by the department pursuant to ~~75-2-111~~ 75-2-112 and 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting and registration requirements of this chapter.

(2) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit.”

**Section 23.** Section 75-2-231, MCA, is amended to read:

**“75-2-231. Medical waste and hazardous waste incineration – additional permit requirements.** (1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the ~~board~~ *department* shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term “commercial medical waste incinerator” does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The ~~board~~ *department* shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of chlorinated dioxins, furans, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air pollutants;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high-quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including heavy metals and possible precursors to the formation of chlorinated dioxins, furans, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or

ambient concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the ~~board~~ *department* to promulgate standards for the allowable intake of any substances for which the federal government has not established standards;

(b) allow the ~~board~~ *department* to promulgate standards for the allowable intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215.”

**Section 24.** Section 75-2-234, MCA, is amended to read:

“**75-2-234. Registration.** The ~~board~~ *department* may adopt rules for the registration of certain classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2).”

**Section 25.** Section 75-2-301, MCA, is amended to read:

“**75-2-301. Local air pollution control programs – consistency with state and federal regulations – procedure for public notice and comment required.** (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the ~~board~~ *department*.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the ~~board~~ *department* by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

(b) ~~Board~~ *Department* approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the ~~board~~ *department*, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

- (ii) public comment is allowed; and
- (iii) the *board department* or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:
  - (A) protects public health or the environment of the area;
  - (B) can mitigate harm to the public health or the environment; and
  - (C) is achievable with current technology.
- (b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the *board's department's* or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.
- (c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the *board department* or the local air pollution control program to review the rule, ordinance, or local law.
  - (ii) If the *board department* or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the *board department* or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.
- (5) Except for those emergency powers provided for in 75-2-402, the *board department* may not delegate to a local air pollution control program the authority to control any air pollutant source that:
  - (a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;
  - (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or
  - (c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.
- (6) If the *board department* finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these makes impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the *board department* may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.
- (7) If the *board department* has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the *board department* shall, on notice, conduct a hearing on the matter.
- (8) If, after the hearing, the *board department* determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(9) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable *board department* order, that are necessary to correct the deficiencies found by the *board department*. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(10) If the *board department* finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may ~~direct the department to assume and retain control over that air pollutant source.~~ A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(11) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (9) may, ~~with the approval of the board,~~ establish or resume an air pollution control program that meets the requirements of subsection (3).

(12) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (13)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (13)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action."

**Section 26.** Section 75-2-302, MCA, is amended to read:

**"75-2-302. State and federal aid.** (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant ~~thereto shall be~~ *to this chapter* is eligible for state aid in an amount up to 30% of the locally funded annual operating cost ~~thereof of the program~~.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the ~~board~~ *department* under 75-2-301."

**Section 27.** Section 75-2-422, MCA, is amended to read:

**"75-2-422. Amount of noncompliance penalty -- late charge.**

(1) The amount of the penalty ~~which that shall be~~ *is* assessed and collected with respect to any source under 75-2-421 through 75-2-429 ~~shall must~~ be equal to:

(a) the amount determined in accordance with the rules adopted by the ~~board~~ *department*, which ~~shall must~~ be no less than the economic value ~~which that~~ a delay in compliance after July 1, 1979, may have for the owner of ~~such the~~ source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value ~~which such a that the~~ delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during ~~any such the~~ quarter for the purpose of bringing that source into and maintaining compliance with ~~such the~~ requirement, to the extent that ~~such the~~ expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for ~~such the~~ quarter from the costs under subsection (1)(a), ~~such the~~ expenditure may be subtracted for any subsequent quarter from ~~such the~~ costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition ~~which that~~ is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department

may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to ~~such the~~ source. The cost of carrying out ~~such the~~ contract may be added to the penalty to be assessed against the owner or operator of ~~such the~~ source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall ~~be required to pay in addition a quarterly nonpayment penalty for each quarter during which such the failure to pay persists. Such The nonpayment penalty shall be is equal to 20% of the aggregate amount of such the person's penalties and nonpayment penalties with respect to such the source which that are unpaid as of the beginning of such the quarter.~~

**Section 28.** Section 75-2-428, MCA, is amended to read:

**“75-2-428. Effect of new standards on noncompliance penalty.** In the case of any emission limitation, emission standard, or other requirement approved or adopted by the ~~board~~ *department* under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.”

**Section 29.** Section 75-5-103, MCA, is amended to read:

**“75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) “Associated supporting infrastructure” means:
  - (a) electric transmission and distribution facilities;
  - (b) pipeline facilities;
  - (c) aboveground ponds and reservoirs and underground storage reservoirs;
  - (d) rail transportation;
  - (e) aqueducts and diversion dams;
  - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
  - (g) other supporting infrastructure, as defined by ~~board~~ *department* rule, that is necessary for an energy development project.
- (2) (a) “Base numeric nutrient standards” means numeric water quality criteria 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.
- ~~(3) “Board” means the board of environmental review provided for in 2-15-3502.~~
- ~~(3) “Board” means the board of environmental review provided for in 2-15-3502.~~
- ~~(4)(4) “Contamination” means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.~~
- ~~(5)(5) “Council” means the water pollution control advisory council provided for in 2-15-2107.~~

~~(6)~~(6) (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.

~~(7)~~(7) “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).

~~(8)~~(8) “Department” means the department of environmental quality provided for in 2-15-3501.

~~(9)~~(9) “Disposal system” means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~(10) “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.

~~(11)~~(11) (a) “Energy development project” means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(12) “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.

~~(13)~~(13) “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~~ department’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.

~~(14)~~(14) “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.

~~(15)~~(15) “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.

~~(16)~~(16) “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.

(17)(17) “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.

(18)(18) “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.

(19)(19) “Local department of health” means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20)(20) “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.

(21)(21) “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~~ *department*.

(22)(22) “Nutrient standards variance” means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

(23)(23) “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 nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

(24)(24) “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.

(25)(25) “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~~ *department* under the provisions of 75-5-316 and approved by the legislature.

(26)(26) “Owner or operator” means a person who owns, leases, operates, controls, or supervises a point source.

(27)(27) “Parameter” means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(28)(28) “Person” means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(29)(29) “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.

(30)(30) (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) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the *board department* under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection ~~(30)(b)(iii) and (30)(b)(iv)~~ ~~(30)(b)(iii) and (30)(b)(iv)~~ does not require a mixing zone.

~~(31)(31)~~ **(31)** “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.

~~(32)(32)~~ **(32)** “Sewage system” means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)(33)~~ **(33)** “Standard of performance” means a standard adopted by the *board department* 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.

~~(34)(34)~~ **(34)** (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.

~~(35)(35)~~ **(35)** “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.

~~(36)(36)~~ **(36)** “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.

~~(37)(37)~~ **(37)** “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.

~~(38)~~(38) “Treatment works” means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(39) “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.

~~(40)~~(40) “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.

~~(41)~~(41) “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.

~~(42)~~(42) “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.

**75-5-103. (Effective on occurrence of contingency) Definitions.**

Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Associated supporting infrastructure” means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by *board department* rule, that is necessary for an energy development project.

(2) (a) “Base numeric nutrient standards” means numeric water quality criteria 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.

~~(3) “Board” means the board of environmental review provided for in 2-15-3502.~~

~~(3) “Board” means the board of environmental review provided for in 2-15-3502.~~

~~(4)~~(4) “Contamination” means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~(5) “Council” means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~(6) (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.

(7)(7) “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).

(8)(8) “Department” means the department of environmental quality provided for in 2-15-3501.

(9)(9) “Disposal system” means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10)(10) “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.

(11)(11) (a) “Energy development project” means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12)(12) “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.

(13)(13) “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 *department’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.

(14)(14) “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.

(15)(15) “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.

(16)(16) “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.

(17)(17) “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.

(18)(18) “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.

(19)(19) “Local department of health” means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20)(20) “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.

(21)(21) “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~~ *department*.

(22)(22) “Nutrient standards variance” means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

(23)(23) “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 nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

(24)(24) “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.

(25)(25) “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~~ *department* under the provisions of 75-5-316 and approved by the legislature.

(26)(26) “Owner or operator” means a person who owns, leases, operates, controls, or supervises a point source.

(27)(27) “Parameter” means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(28)(28) “Person” means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(29)(29) “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.

(30)(30) (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) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~ *department* under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ *(30)(b)(iii) and (30)(b)(iv)* does not require a mixing zone.

~~(31)(31)~~ *(31)* "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.

~~(32)(32)~~ *(32)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)(33)~~ *(33)* "Standard of performance" means a standard adopted by the ~~board~~ *department* 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.

~~(34)(34)~~ *(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.

~~(35)(35)~~ *(35)* "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.

~~(36)(36)~~ *(36)* "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.

~~(37)(37)~~ *(37)* "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.

(38)(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39)(39) "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.

(40)(40) "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.

(41)(41) "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.

(42)(42) "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 30.** Section 75-5-106, MCA, is amended to read:

**"75-5-106. Interagency cooperation – enforcement authorization.**

(1) The council, ~~board~~, and ~~the~~ department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, ~~board~~, and ~~the~~ department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The ~~board~~ department may adopt rules regarding the granting of enforcement authority to local water quality districts."

**Section 31.** Section 75-5-201, MCA, is amended to read:

**"75-5-201. Board rules Rules authorized.** (1) (a) The ~~board~~ department shall, except as provided in 75-5-411 and subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(b) The ~~board~~ department shall adopt rules that describe the location and the times of the year when suction dredging is permissible. These rules may be adopted only after consultation with the local conservation districts in the areas subject to the rule.

(2) The ~~board's~~ department's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."

**Section 32.** Section 75-5-203, MCA, is amended to read:

**“75-5-203. State regulations no more stringent than federal regulations or guidelines.** (1) Except as provided in subsections (2) through (5) or unless required by state law, the *board department* may not adopt a rule to implement 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The *board department* may incorporate by reference comparable federal regulations or guidelines.

(2) The *board department* may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the *board department* makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

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

(4) (a) ~~A person affected by a rule of the board that that~~ *the person* believes to be more stringent than comparable federal regulations or guidelines may petition the *board board* to review the rule. If the *board board* determines that the rule is more stringent than comparable federal regulations or guidelines, the *board department* shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 8 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The *board department* may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the *board board* for a rule review under subsection (4)(a) if the *board department* adopts a rule in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted *board department* rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).”

**Section 33.** Section 75-5-222, MCA, is amended to read:

**“75-5-222. State regulation for natural conditions.** (1) The department may not apply a standard to a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the standard is the nonanthropogenic condition of the parameter in the water body. The department shall implement the standard in a manner that provides for the water quality standards for downstream waters to be attained and maintained.

(2) (a) For water bodies where the standard is more stringent than the condition of the water body but subsection (1) is not applicable, the *board department* shall adopt rules consistent with comparable federal rules and guidelines providing criteria and procedures for the department to issue variances from standards if:

- (i) the condition cannot reasonably be expected to be remediated during the permit term for which the application for variance has been received; and
- (ii) the discharge to which the variance applies would not materially contribute to the condition.

(b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be modified or terminated as a result of the review.”

**Section 34.** Section 75-5-301, MCA, is amended to read:

**“75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201 and this chapter, the ~~board~~ *department* shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water quality, ~~giving consideration to~~ *considering* the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312. Standards ~~adopted by the board~~ must meet the following requirements:

(a) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed  $1 \times 10^{-3}$  in the case of arsenic and  $1 \times 10^{-5}$  for other carcinogens. However, if a standard established at a risk level of  $1 \times 10^{-3}$  for arsenic or  $1 \times 10^{-5}$  for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(b) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

- (a) the smallest practicable size;
- (b) a minimum practicable effect on water uses; and
- (c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

- (i) determining important economic or social development; and
- (ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter from sources other than sewage;

(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section.”

**Section 35.** Section 75-5-302, MCA, is amended to read:

**“75-5-302. Revising classifications in accordance with existing, present, and future most beneficial uses of water bodies.** When the board or department is presented with facts indicating that a body of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the department shall, within 90 days, evaluate the facts and advise the board whether the water body is not properly classified. If the board department determines that the water body is not properly classified, the board department shall initiate rulemaking to properly classify the water body in accordance with its existing, present, and future most beneficial uses. Board action Action pursuant to this section is subject to 75-5-307.”

**Section 36.** Section 75-5-303, MCA, is amended to read:

**“75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-317, the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically

feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the ~~board~~ *board* within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the ~~board~~ *board*.

(7) The ~~board~~ *department* may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The ~~board~~ *department* shall adopt rules to implement this section."

**Section 37.** Section 75-5-304, MCA, is amended to read:

**"75-5-304. Adoption of standards -- pretreatment, effluent, performance.** (1) The ~~board~~ *department* shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

(b) adopt effluent standards as defined in 75-5-103;

(c) adopt toxic effluent standards and prohibitions;

(d) establish standards of performance for new point source discharges; and

(e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake structures under 33 U.S.C. 1326(b).

(2) In taking action under subsection (1), the ~~board~~ *department* shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible."

**Section 38.** 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~~ *department* 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~~ *department* 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~~ *department* 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~~ *department* 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, the ~~board~~ *department* 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~~ *department* 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~~ *department'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 39.** Section 75-5-307, MCA, is amended to read:

**"75-5-307. Hearings required for classification, formulation of standards, and rulemaking.** (1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the ~~board~~ *department* shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified ~~shall~~ *must* be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice ~~shall also~~ *must* be mailed directly to persons the ~~board~~ *department* believes may be affected by the proposed action. The council ~~shall~~ *must* be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the ~~board~~ *department* shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The ~~board~~ *department* may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611."

**Section 40.** Section 75-5-308, MCA, is amended to read:

**"75-5-308. Short-term water authorizations -- water quality standards.** (1) Because these activities promote the public interest, the department may, if necessary, authorize short-term exemptions from the water quality standards for the following activities:

(a) emergency remediation activities that have been approved, authorized, or required by the department; and

(b) application of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species.

(2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of any change in the concentration of the parameters affected by the activity and the length of time during which any change may

occur. The authorization must also include conditions that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted by the board pursuant to 75-5-401.”

**Section 41.** Section 75-5-310, MCA, is amended to read:

**“75-5-310. Site-specific standards of water quality for aquatic life.** (1) Notwithstanding any other provisions of this chapter and except as provided in subsection (2), the ~~board~~ *department*, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the ~~board~~ *board* shall, on the request of the department or the applicant, hear and determine the dispute. The ~~board's~~ *board's* decision must be based on sound scientific, technical, and available site-specific evidence.”

**Section 42.** Section 75-5-311, MCA, is amended to read:

**“75-5-311. Local water quality districts – ~~board~~ *department* approval – local water quality programs.** (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the ~~board~~ *department* after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the ~~board~~ *department* shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to ~~the board's~~ *department* approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

- (a) onsite wastewater disposal facilities;
- (b) storm water runoff from paved surfaces;
- (c) service connections between buildings and publicly owned sewer mains;
- (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

(iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.

(b) ~~Board~~ *Department* approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the ~~board~~ *department* has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the ~~board~~ *department* and obtain ~~the board's~~ *department* approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. ~~If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.~~

(9) If the ~~board~~ *department* determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the ~~board~~ *department* shall give notice and conduct a hearing on the matter.

(10) If after the hearing the ~~board~~ *department* determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the ~~board~~ *department* shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the ~~board~~ *department* finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the ~~board may direct the department to~~ *may* assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located."

**Section 43.** Section 75-5-312, MCA, is amended to read:

**"75-5-312. Temporary water quality standards.** (1) The ~~board~~ *department* may, ~~upon recommendation of the department on its own accord or~~ upon a petition for rulemaking, as provided in 2-4-315, by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-by-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the ~~board~~ *department* adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses designated for that water body or segment are supported.

(2) As a condition for establishing temporary water quality standards for a particular water body or segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary implementation plan for use by the ~~board~~ *department* in determining whether to adopt the proposed temporary water quality standards. A person shall submit a support document and a preliminary implementation plan to the department for its review at least 60 days prior to filing a petition with the ~~board~~ *department* requesting the adoption of temporary water quality standards.

(3) The support document prepared by the department or the petitioner, as applicable, must describe:

(a) the chemical, biological, and physical condition of the water body or segment;

(b) the specific water quality limiting factors affecting the water body or segment;

(c) the existing water quality standards that are not being achieved;

(d) the temporary modifications to the existing water quality standards being requested;

(e) existing beneficial uses; and

(f) the designated uses considered attainable in the absence of the water quality limiting factors.

(4) The preliminary implementation plan prepared by the department or the petitioner, as applicable, must contain:

(a) a description of the proposed actions that will eliminate the water quality limiting factors identified in subsection (3)(b) to the extent considered achievable; and

(b) a schedule for implementing the proposed actions that ensures that the existing water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable.

(5) Within 30 days after the ~~board's~~ *department's* adoption of temporary water quality standards, the department or the petitioner, as applicable, shall:

(a) modify the preliminary implementation plan and schedule to reflect the requirements and timeframe adopted by the ~~board~~ *department* for the temporary standards; and

(b) develop a detailed work plan describing the implementation activities that will be conducted during the first field season of the temporary standards. The work plan must be approved by the director of the department.

(6) By March 1 of each year that the temporary water quality standards are in effect, the department or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that will be conducted during that season. The annual work plans must be approved by the director of the department. The department shall maintain copies of the implementation plan, schedule, and annual work plans and any modifications to those plans and schedule.

(7) Upon the ~~board's~~ *department's* adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

(8) (a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the ~~board~~ *department* may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

(9) If a state water is designated as having temporary standards, the department shall report ~~to the board~~ at least every 3 years ~~or upon request of the board~~ regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary standards.

(10) The ~~board~~ *department* shall review the temporary standards and implementation plan at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During this review, the ~~board~~ *department* shall consider the progress made in restoring water quality to a level that achieves the goal of the temporary water quality standards. The ~~board~~ *department* may terminate or modify the temporary standards based on information submitted at the time of review.

(11) The ~~board~~ *department* shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that plan or schedule made by the ~~board~~ or department.

(12) The ~~board~~ or the department may modify the implementation plan if there is convincing evidence that the plan needs modification.

(13) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the ~~board~~ or department, a person may request a new temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the requirements of subsection (4). However, the *board department* may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water."

**Section 44.** Section 75-5-313, MCA, is amended to read:

**"75-5-313. Nutrient standards variances – individual, general, and alternative.** (1) The department shall, on a case-by-case basis, approve the use of an individual nutrient standards variance 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, limits of technology, or both.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for individual nutrient standards variances 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, acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts.

(b) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards to the ~~board~~ and shall continue to consult with the nutrient work group in implementing individual nutrient standards variances.

(3) The department shall review each application for an individual nutrient standards variance on a case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the individual nutrient standards variance.

(4) Individual nutrient standards variances 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.

(5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

(b) The department shall approve the use of a general nutrient standards variance for permittees with wastewater treatment facilities that discharge to surface water:

(i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply;

(ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply; or

(iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

(6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

(b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates 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.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

(12) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the water policy committee established in 5-5-231 by providing a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and the implementation of those standards and variances, including estimated economic impacts.

(13) 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 two most recent reports provided under subsection (12) and submit to the water policy committee established in 5-5-231 this final summary in accordance with 5-11-210.”

**Section 45.** Section 75-5-315, MCA, is amended to read:

**“75-5-315. Outstanding resource waters – statement of purpose.**

(1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana’s water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to provide guidance to the ~~board~~ *department* in establishing rules to accomplish that level of protection.”

**Section 46.** Section 75-5-316, MCA, is amended to read:

**“75-5-316. Outstanding resource water classification – rules – criteria – limitations – procedure – definition.** (1) As provided under the provisions of 75-5-301 and this section, the ~~board~~ *department* may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the ~~board~~ *department* for rulemaking to classify state waters as outstanding resource waters. The ~~board~~ *department* shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the ~~board~~ *department* to accept the petition.

(b) The ~~board~~ *department* may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the ~~board~~ *department* rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition’s deficiencies.

(c) The ~~board~~ *department* may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that ~~the board believes serve~~ *serve* as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.

(4) The ~~board~~ *department* shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the ~~board~~ *department* may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The ~~board~~ *department* shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) Before accepting a petition, the ~~board~~ *department* shall:

(a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

(b) provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

(c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

(d) issue a proposed decision, including:

(i) the written finding provided for in subsection (3)(c); and

(ii) the ~~board's~~ *department's* acceptance or rejection of the petition;

(e) provide for a 30-day public comment period regarding the ~~board's~~ *department's* proposed decision; and

(f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments ~~that were~~ received by the ~~board,~~ *department,* and make copies of this decision available to the public.

(6) (a) After acceptance of a petition, the ~~board shall direct~~ the department ~~to shall~~ prepare an environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

(b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

(ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the

cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The *board department* may not grant or deny a petition until full payment for the environmental impact statement ~~has been~~ *is* received by the ~~department~~.

(7) The *board department* shall consult with other relevant state agencies and county governments when reviewing outstanding resource water classification petitions.

(8) (a) After completion of an environmental impact statement and consultation with state agencies and local governments, the *board department* may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)(c) have not been met; or

(ii) based on information available to the *board department* from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the *board department* denies the petition, it shall identify its reasons for petition denial.

(c) If the *board department* grants the petition, the *board department* shall initiate rulemaking to classify the waters as outstanding resource waters.

(9) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(10) The *board department* may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) *board department* action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of *board department* action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the *board department* to adopt rules to classify waters as outstanding resource waters."

**Section 47.** Section 75-5-318, MCA, is amended to read:

**"75-5-318. Short-term water quality standards for turbidity.**

(1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the *board department* under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the *board department* under 75-5-301 does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted by the *board* under 75-5-301 cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent practicable, the magnitude of any change in

water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not authorize short-term narrative standards for activities requiring a discharge permit under rules adopted by the board pursuant to 75-5-401. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting.

(4) In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may, in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7, part 1, or Title 87, chapter 5, part 5.”

**Section 48.** Section 75-5-401, MCA, is amended to read:

**“75-5-401. (Temporary) Board rules Rules for permits – ground water exclusions.** (1) Except as provided in subsection (5), the ~~board~~ *department* shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~ *department* may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The *board department* may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The *board department* may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The *board department* may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.

**75-5-401. (Effective on occurrence of contingency) Board rules**  
**Rules for permits – ground water exclusions.** (1) Except as provided in subsection (5), the ~~board~~ *department* shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~ *department* may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The ~~board~~ *department* may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3;

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20; or

(l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11, part 1.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The ~~board~~ *department* may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The ~~board~~ *department* may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.”

**Section 49.** Section 75-5-402, MCA, is amended to read:

**“75-5-402. Duties of department.** The department shall:

(1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the ~~board~~ *department*;

(2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(3) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged; and

(4) establish as conditions to the issuance of permits for which a performance bond or other surety is filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and after operation of the project or activity for which a permit is issued.”

**Section 50.** Section 75-5-502, MCA, is amended to read:

**“75-5-502. Board Department authorized to accept loans and grants.** The *board department* may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.”

**Section 51.** Section 75-5-514, MCA, is amended to read:

**“75-5-514. When board department to establish rates and collect charges.** (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the *board department* may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513.”

**Section 52.** Section 75-5-515, MCA, is amended to read:

**“75-5-515. Determination of costs payable by users.** In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the *board department* shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and such other factors as deemed necessary.”

**Section 53.** Section 75-5-516, MCA, is amended to read:

**“75-5-516. Fees authorized for recovery – process – rulemaking.**

(1) Except as provided in subsections (12) and (13), the *board department* shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board’s and department’s documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) Except as provided in subsection (12), the rules promulgated by the *board* under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department’s cost of reviewing and acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to *board* rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than

\$3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to ~~board~~ rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the ~~board~~ *board* within 20 days after receiving written notice of the department's fee determination under subsection (7). The appeal to the ~~board~~ must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ *board* under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

- (i) \$25 if it is owned and operated by a resident of this state; or
- (ii) \$100 if it is owned and operated by a nonresident of this state.

(b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

- (i) \$25 if it is owned and operated by a resident of this state; or
- (ii) \$100 if it is owned and operated by a nonresident of this state.

(13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76, chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401 of the federal Clean Water Act, 33 U.S.C. 1341.”

**Section 54.** Section 75-5-802, MCA, is amended to read:

**“75-5-802. Permitting – concentrated animal feeding operation.**

(1) For the purpose of permitting concentrated animal feeding operations, the ~~board~~ department shall adopt, by reference, the federal regulations and definitions contained in 40 CFR, parts 122.23 and 412.

(2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an individual permit.”

**Section 55.** Section 75-6-104, MCA, is amended to read:

**“75-6-104. Duties of department.** (1) *The department has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or as a source of ice.*

(2) *The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, 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;*

(k) (i) *allowable uses of reclaimed wastewater and classification of those uses;*

(ii) *treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;*

(iii) *prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and*

(iv) *a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and*

(l) *any other requirement necessary for the protection of public health as described in this part.*

(3) *Department rules must provide for the following:*

(a) *except as provided in 75-6-131, 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, and except as provided under rules adopted pursuant to 75-6-131, 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 department or the board may issue orders necessary to fully implement the provisions of this part.*

(5) *The department shall:*

(5)(a) *upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply*

system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2)(b) have waters examined to determine their quality and the possibility that they may endanger public health;

(3)(c) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(4)(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5)(e) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6)(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7)(g) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;

(8)(h) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the ~~board~~ *department* are being obeyed;

(9)(i) enforce and administer the provisions of this part;

(10)(j) establish a plan for the provision of safe drinking water under emergency circumstances;

(11)(k) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12)(l) enter into agreements with local boards of health whenever appropriate for the performance of surveys and inspections under the provisions of this part.”

**Section 56.** Section 75-6-105, MCA, is amended to read:

**“75-6-105. Records required for wells drilled to supply water to public.** Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the ~~board~~ *department*. Data ~~shall~~ *must* be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.”

**Section 57.** Section 75-6-106, MCA, is amended to read:

**“75-6-106. Laboratory license required.** A laboratory analysis of water taken from a public water supply system or any report of an analysis required by this part or a rule adopted under this part may not be accepted by the department ~~or board~~ unless the analysis or report is made by the department of public health and human services’ laboratory or by a laboratory licensed by the department of public health and human services for water analysis purposes.”

**Section 58.** Section 75-6-107, MCA, is amended to read:

**“75-6-107. Variances and exemptions.** (1) Except as provided in subsection (3), the department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the ~~board~~ *department*.

(2) Except as provided in subsection (3), a variance or exemption granted pursuant to this section must be accompanied by a compliance plan specifying a time schedule for compliance.

(3) The department may grant for a period of up to 5 years a variance or exemption for a public water system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance or exemption must include the requirement that the owner of the public water system warn the public that the tap water is not potable and could pose a health risk if consumed by:

(a) posting signs at locations required by the variance or exemption for the period granted by the variance or exemption; and

(b) delivering annual notices as required by the variance or exemption to users of the public water system.

(4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the ~~board~~ *board* as provided in the Montana Administrative Procedure Act."

**Section 59.** Section 75-6-108, MCA, is amended to read:

**"75-6-108. Board Department to prescribe fees -- opportunity for appeal.** (1) The ~~board~~ *department* shall by rule prescribe fees to be assessed annually ~~by the department~~ on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than \$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than \$2 for each service connection to the public water supply system, although the minimum fee for any system is \$100, except that the fee for a transient noncommunity water system is \$50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The ~~board~~ *department* shall by rule prescribe fees ~~to be assessed by the department~~ on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing ~~to the board~~ *to the board* within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the ~~board~~ *department*.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a)."

**Section 60.** Section 75-6-112, MCA, is amended to read:

**"75-6-112. Prohibited acts.** A person may not:

(1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the *board department* unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(3) violate any provision of this part or a rule adopted under this part; or

(4) violate any condition or requirement of an approval issued pursuant to this part.”

**Section 61.** Section 75-6-116, MCA, is amended to read:

**“75-6-116. State regulations no more stringent than federal regulations or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the *board department* may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The *board department* may incorporate by reference comparable federal regulations or guidelines.

(2) The *board department* may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the *board department* makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

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

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

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

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).”

**Section 62.** Section 75-6-121, MCA, is amended to read:

**“75-6-121. Delegation of review of small public water and sewer construction.** (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department may delegate to the division of local government review of:

- (a) small public water and sewer systems; and
- (b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer connections.

(2) The ~~board~~ *department* may adopt rules regarding the delegation of review authority to divisions of local government.”

**Section 63.** Section 75-6-131, MCA, is amended to read:

“**75-6-131. Rules for regional public water supply systems.** The ~~board~~ *department* shall adopt rules for approval of regional public water supply systems established by a regional water authority pursuant to Title 75, chapter 6, part 3. The rules must:

(1) include procedures for the construction of regional public water supply systems, including regulatory provisions for a series of project segments over the construction period of the project as contained in the final engineering report, as may be amended and approved by the United States bureau of reclamation, that addresses the:

(a) approval of design and construction standards that may not be subject to change for 72 months;

(b) issuance of deviations from design and construction standards to remain in effect for 72 months; and

(c) approval of an individual regional water supply system’s standard construction contract documents and provisions for amendments to those documents to remain in effect for the construction period of the project;

(2) implement plan and specification review periods or deviation request approval periods for storage, pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days for the initial review by the department and not more than 20 working days for any subsequent reviews;

(3) avoid duplicate processes and regulations by coordinating and incorporating the review and approval process applicable to a regional public water supply system by the United States bureau of reclamation.”

**Section 64.** Section 75-10-104, MCA, is amended to read:

“**75-10-104. Duties of department.** The department shall:

(1) prepare, adopt, and implement a state solid waste management and resource recovery plan as required by 75-10-111 and 75-10-807;

(2) ~~prepare~~ *adopt* rules necessary for the implementation of this part ~~for submission to the board~~, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) *(i)* establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility; *and*

*(ii)* governing the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems;

(c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

(d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

(e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c); and

(f) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6);

(3) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

- (a) a solid waste management system in order to ensure that the system conforms to the state plan;
- (b) integrated waste management programs; and
- (c) collection, disposal, reduction, and educational programs for household hazardous waste and small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;
- (4) enforce and administer the provisions of this part;
- (5) approve plans for a proposed solid waste management system submitted by a local government; and
- (6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.”

**Section 65.** Section 75-10-112, MCA, is amended to read:

**“75-10-112. Powers and duties of local government.** A local government may:

- (1) plan, develop, and implement a solid waste management system consistent with the state’s solid waste management and resource recovery plan and propose modifications to the state’s solid waste management and resource recovery plan;
- (2) upon adoption of the state plan ~~by the board~~, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.
- (3) employ appropriate personnel to carry out the provisions of this part;
- (4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;
- (5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;
- (6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;
- (7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;
- (8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;
- (9) borrow from any lending agency funds available for assistance in planning a solid waste management system;
- (10) finance a solid waste management system by:
  - (a) subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and
  - (b) as provided in 7-13-4108, fixing and collecting by ordinance or resolution the rates, rentals, and charges for a solid waste management system on system customers;
- (11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;
- (12) procure insurance against any loss in connection with property, assets, or activities;
- (13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is

consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of the local government, except that, in the absence of an imminent threat to public health, safety, or the environment, a local government may not adopt a flow control or similar ordinance to require use of a specific transfer station or landfill for disposal of solid waste;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites.”

**Section 66.** Section 75-10-115, MCA, is amended to read:

**“75-10-115. Solid waste management fee.** (1) The department may ~~prepare adopt~~ rules for adoption by the board, pursuant to 75-10-104 and ~~75-10-106~~, that set fees for the management and regulation of solid waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption ~~by the board~~, the department may collect the fees. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility from the time an application is made until the license is issued or denied;

(b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal. The initial annual fee year for a new facility commences on the date that the facility initially receives waste. The fee must be based upon the categorization of solid waste management systems into separate classes identified by the following criteria:

(i) the quantity of solid waste received by the solid waste management system;

(ii) the nature of the solid waste received; and

(iii) the nature of the waste management occurring within the solid waste management system.

(c) a tonnage or volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117.”

**Section 67.** Section 75-10-221, MCA, is amended to read:

**“75-10-221. License required – application.** (1) Except as provided in 75-10-214, a person may not dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application must contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and other information that the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department.

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In preparing rules for ~~board adoption~~ that establish fees for licenses and the review of applications pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and the size of the proposed solid waste management system. The fees adopted by ~~the board~~ must encourage reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system.”

**Section 68.** Section 75-11-505, MCA, is amended to read:

**“75-11-505. Administrative rules – underground storage tanks – petroleum mixing zones.** (1) The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(a) reporting by owners and operators;

(b) financial responsibility;

(c) release detection, prevention, and corrective action;

(d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;

(e) standards for design, construction, installation, and closure;

(f) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(h) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(2) In accordance with 75-11-508, the department:

(a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a corrective action plan; and

(b) may incorporate by reference rules adopted by ~~the board of environmental review~~ pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water.”

**Section 69.** Section 75-11-508, MCA, is amended to read:

**“75-11-508. Corrective action – petroleum mixing zones.** (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

(a) all source material has been removed to the maximum extent practicable;

(b) the extent of petroleum contamination has been defined;

(c) natural breakdown or attenuation is occurring within the plume; and

(d) no further corrective action is reasonably required at the site.

(3) The boundary of a petroleum mixing zone established in accordance with this section must be contained within the boundary of the property on which the petroleum release originated unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend onto the adjoining property.

(4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding, site-specific, impact-related reason to require monitoring.

(5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent, including benzene, may not exceed a water quality standard adopted by the board pursuant to 75-5-301.

(6) If a petroleum mixing zone is established and maintained:

(a) the petroleum release is considered to be resolved;

(b) no further corrective action for the petroleum release is required; and

(c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum mixing zone has been established for the release and describing any conditions required to maintain the petroleum mixing zone.

(7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior to April 15, 2011.”

**Section 70.** Section 75-20-105, MCA, is amended to read:

“**75-20-105. Adoption of rules.** The board *department* may adopt rules implementing the provisions of this chapter.”

**Section 71.** Section 75-20-216, MCA, is amended to read:

“**75-20-216. Study, evaluation, and report on proposed facility – assistance by other agencies.** (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies.

Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall:

(a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3);

(b) use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency; and

(c) if a modification of a proposed facility is needed as determined by the department, consult with the applicant. The proposed modification must be analyzed in the environmental review document prepared under Title 75, chapter 1, parts 1 through 3.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the ~~board~~ *department*, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation and the consumer counsel shall report to the department information relating to the impact of the proposed facility on each department's area of expertise. The department shall allocate funds obtained from filing fees to the departments making reports and to the office of consumer counsel to reimburse them for the costs of compiling information and issuing the required report."

**Section 72.** Section 75-20-406, MCA, is amended to read:

**"75-20-406. Judicial review of board decisions.** (1) A person aggrieved by the final decision of the ~~board~~ *department or board* on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

**Section 73.** Section 75-20-407, MCA, is amended to read:

**“75-20-407. Jurisdiction of courts restricted.** Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the ~~board~~ *board or department* under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued ~~hereunder~~ pursuant to 75-20-404 and 75-20-405 or 75-20-408.”

**Section 74.** Section 75-20-1001, MCA, is amended to read:

**“75-20-1001. Geothermal exploration – notification of department.** The ~~board~~ *department* shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

- (1) notify the department of the proposed action;
- (2) submit to the department a description of the area involved;
- (3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;
- (4) submit to the department geological data reports at such times as may be required by the rules; and
- (5) submit such other information as the ~~board~~ *department* may require in the rules.”

**Section 75.** Section 75-20-1203, MCA, is amended to read:

**“75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility.** (1) The ~~board~~ *department* may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, ~~and/or~~ *or* operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation ~~which that~~ may be required from the designers, manufacturers, distributors, owners, ~~and/~~ *or* operators of a nuclear facility for damages resulting from the existence or operation of ~~such the~~ *the* facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of ~~such the~~ *the* nuclear facility has been demonstrated, to the satisfaction of the ~~board~~ *department*, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from ~~such the~~ *the* nuclear facilities can be contained with no reasonable chance, as determined by the ~~board~~ *department*, of intentional or unintentional escape or diversion of ~~such radioactive~~ *radioactive* materials into the natural environment in ~~such a manner as to cause that causes~~ substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the ~~board~~ *department* may ~~deem to be consider~~ reasonably possible, at any time during which ~~such the~~ *the* materials remain a radiological hazard; and

(d) the owner of ~~such the~~ *the* nuclear facility has posted with the ~~board~~ *department* a bond totaling not less than 30% of the total capital cost of the facility, as estimated by the ~~board~~ *department*, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the

event the owner fails to pay the full costs of ~~such~~ *the* decommissioning and decontamination. Excess bond, if any, ~~shall~~ *must* be refunded to the owner upon demonstration, to the satisfaction of the ~~board~~ *department*, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the ~~board~~ *department* may ~~deem~~ *consider* reasonable ~~have been~~ *are* met.

(2) Nothing in this section ~~shall~~ *may* be construed as relieving the owner of a nuclear facility from full financial responsibility for the decommissioning of ~~such~~ *the* facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of ~~such~~ *the* facility at any time during which such materials remain a radiological hazard.”

**Section 76.** Section 75-20-1205, MCA, is amended to read:

**“75-20-1205. Emergency approval authority invalid for nuclear facilities.** Notwithstanding the provisions of 75-20-304(2) and (3), the ~~board~~ *department* may not waive compliance with any of the provisions of 75-20-201 and 75-20-203 or this part relating to certification of a nuclear facility.”

**Section 77.** Section 76-3-622, MCA, is amended to read:

**“76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

- (a) a vicinity map or plan that shows:
  - (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:
    - (A) flood plains;
    - (B) surface water features;
    - (C) springs;
    - (D) irrigation ditches;
    - (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
    - (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
    - (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
    - (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;
  - (b) a description of the proposed subdivision’s water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:
    - (i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and
    - (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;
  - (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511.”

**Section 78.** Section 76-4-1001, MCA, is amended to read:

**“76-4-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator’s prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator’s action;

(e) the violator’s good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) ~~The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.~~

**Section 79.** Section 80-15-105, MCA, is amended to read:

**"80-15-105. Rulemaking.** (1) ~~The board~~ *department of environmental quality*, subject to the provisions of 80-15-110, shall adopt rules for the administration of this chapter for which ~~the board and the~~ department of environmental quality ~~have~~ *has* responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of environmental quality on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412.”

**Section 80.** Section 80-15-110, MCA, is amended to read:

**“80-15-110. State regulations no more stringent than federal regulations or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ *department of environmental quality* may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~ *department of environmental quality* may incorporate by reference comparable federal regulations or guidelines.

(2) The ~~board~~ *department of environmental quality* may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if ~~the board~~ *it* makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

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

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

(b) A person may also petition the ~~board~~ *board* for a rule review under subsection (4)(a) if the ~~board~~ *board* ~~adopts~~ *adopted* a rule after January 1, 1990, ~~and before [the effective date of this act]~~ in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).”

**Section 81.** Section 80-15-201, MCA, is amended to read:

**“80-15-201. Ground water standards.** (1) The ~~board~~ *department of environmental quality* shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the ~~board~~ *department of environmental quality* may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the ~~board~~ *department of environmental quality* must adopt the most recently established nonpromulgated federal standard.

(2) The ~~board~~ *department of environmental quality* is not required to adopt a standard or interim numerical standard for each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in 80-15-202; or

(c) that the department and the department of environmental quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard has not been published for an agricultural chemical for which the ~~board~~ *department of environmental quality* is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of environmental quality determines that EPA cannot comply with the request within 15 days, the ~~board~~ *department of environmental quality* shall adopt an interim numerical standard, provided that the ~~board~~ *department of environmental quality* shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The ~~board~~ *department of environmental quality* may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The ~~board~~ *department of environmental quality* shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The ~~board~~ *department of environmental quality* shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the ~~board's~~ *department of environmental quality's* responsibility to adopt rules and standards under Title 75, chapter 6."

**Section 82.** Section 82-4-102, MCA, is amended to read:

**"82-4-102. Intent – findings – policy and purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(3) It is the purpose of this part:

(a) to vest in the department the authority *to adopt rules and* to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

~~(b) to vest in the board the authority to adopt rules;~~

~~(c)~~ to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands disturbed by the taking of natural resources be reclaimed; and

~~(d)~~ to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

**Section 83.** Section 82-4-112, MCA, is amended to read:

**"82-4-112. Administration.** (1) The department shall:

(a) *adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of reports, issuance of permits, and other matters of procedure and administration;*

~~(a)~~ exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

~~(b)~~ issue orders requiring operators to adopt remedial measures necessary to comply with this part and rules adopted under this part;

~~(c)~~ order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or a permit issued pursuant to this part;

~~(d)~~ issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(e)~~ order the halting of any operation that is started without first having obtained a permit as required by this part;

~~(f)~~ conduct investigations and inspections necessary to ensure compliance with this part; and

~~(g)~~ encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

(2) The ~~board~~ *board* shall conduct hearings under this part.”

**Section 84.** Section 82-4-123, MCA, is amended to read:

**“82-4-123. Permit fee and surety bond.** A fee of \$50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the ~~board~~ *department*. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.”

**Section 85.** Section 82-4-129, MCA, is amended to read:

**“82-4-129. Noncompliance – suspension of permits.** (1) If any of the requirements of this part or rules or orders of the department have not been complied with within the time limits set by the department or by this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director of the department shall order the suspension of a permit. The notice or order must be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part or the rules or orders of the department ~~and the board~~ ~~and the board~~. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set in the notice or order, the permit may be revoked by order of the ~~board~~ *board* and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to previous permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.”

**Section 86.** Section 82-4-205, MCA, is amended to read:

**“82-4-205. Administration by department ~~and board~~ ~~and board~~.** (1) *The department shall adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part. The department may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration.*

(1)(2) The department:

(a) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(b) shall review for approval or disapproval all plans and specifications submitted by an operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and topsoiling and for the reclamation of the area of land affected by the operator's operation;

(c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(d) shall order the suspension of any permit for failure to comply with this part or a rule adopted under this part;

(e) shall issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(f) shall order the halting of any operation that is started without first having obtained a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(g) shall conduct public hearings required under this part or rules adopted by the board pursuant to this part;

(h) shall conduct investigations and inspections necessary to ensure compliance with this part; and

(i) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining.

~~(2) The board shall conduct contested case hearings under this part.~~

~~(2) The board shall conduct contested case hearings under this part."~~

**Section 87.** Section 82-4-207, MCA, is amended to read:

**"82-4-207. Rulemaking -- in situ coal gasification.** (1) Within 1 year of October 1, 2011, and in accordance with subsection (3), the board department shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the board department may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The board department shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1)."

**Section 88.** Section 82-4-223, MCA, is amended to read:

**"82-4-223. Surety bond.** (1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in an amount to be determined by the department of not less than \$200 for each acre or fraction of an acre of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board department. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of these securities must be equal to or greater than the amount of the bond required for the bonded area. The level of bonding must be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so

by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

(2) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.”

**Section 89.** Section 82-4-226, MCA, is amended to read:

**“82-4-226. Prospecting permit.** (1) Except as provided in subsection (7), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit filed pursuant to subsection (1) must be made in writing, notarized, and submitted to the department upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral

deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through (6). However, a person who conducts prospecting described in this subsection (7)(a) shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the ~~board's~~ *department's* rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

(b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to subsection (8).

(ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial disturbance.

(8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

(i) the name, address, and telephone number of the person who seeks to prospect;

(ii) the name, address, and telephone number of the person's representative who will be present at and responsible for conducting the prospecting activities;

(iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of 1:24,000 or greater showing:

(A) the general location of drill holes and trenches;

(B) existing and proposed roads;

(C) occupied dwellings;

(D) topographic features;

(E) bodies of water; and

(F) pipelines;

(iv) a copy of the documents upon which the applicant bases its legal right to prospect, including documentation that the owners of the land affected have been notified and understand that the department will make investigations and inspections to ensure compliance;

(v) a statement of the period of intended prospecting; and

(vi) a description of the method of prospecting to be used and the practices that will be followed to protect the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance with rules adopted by the ~~board~~ *department*.

(b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing as to whether the application is complete and preliminarily acceptable. If the department determines that the application is not complete or not preliminarily acceptable, the department shall include a detailed identification of information necessary to cure the deficiency.

(c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the response and notify the person as to whether the application is complete and preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable, the department shall notify the person in writing and include a detailed identification of information necessary to make the application complete and preliminarily acceptable.

(d) When the department determines that the application is complete and preliminarily acceptable, the department shall notify the applicant in writing. The notification must include the amount of bond that is required to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

**Section 90.** Section 82-4-231, MCA, is amended to read:

**"82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board *department*, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for a permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department

shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately ~~notify the board~~ *notify the board* in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be started within 30 days of the request. For purposes of a hearing, the ~~board~~ *board* or its hearings officer may order site inspections of the area pertinent to the application. The ~~board~~ *board* shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the ~~board~~ department.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

(viii) any other actions that the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area.”

**Section 91.** Section 82-4-232, MCA, is amended to read:

**“82-4-232. Area mining required – bond – alternative plan.** (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by ~~board~~ *department* rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the ~~board~~ *department*. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the ~~board~~ *department* shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the ~~board~~ *department*, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number

of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

- (i) the location and acreage of the land for which bond release is sought;
- (ii) the amount of bond release sought;
- (iii) a description of the completed reclamation, including the date of performance;
- (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and
- (v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.

(e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(g) If the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes but is not limited to:

(i) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(h) The department shall, within 30 days of determining that the application is administratively complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

(i) The department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit.

(j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes but is not limited to:

(A) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) a material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(k) The department shall release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for

the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. Any part of the bond may not be released under this subsection (6)(k)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(l) If the department disapproves the application for release of the bond or a portion of the bond, it shall:

(i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the bond or a portion of the bond has not been accomplished as required by this part; and

(ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(m) When an application for total or partial bond release is filed with the department, it shall notify the municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

(i) There is a reasonable likelihood for achievement of the alternative land use.

(ii) The alternative land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The alternative land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan.”

**Section 92.** Section 82-4-234, MCA, is amended to read:

**“82-4-234. Commencement of reclamation.** The operator shall commence the reclamation of the area of land affected by the operator’s operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans must be kept current with the operation as defined by rules of the *board department*, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current.”

**Section 93.** 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 department*;

(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). 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 sedimentation ponds, diversions, other water management structures, soils stockpiles, and access roads.

(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 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 (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."

**Section 94.** 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 department* 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 95.** Section 82-4-254, MCA, is amended to read:

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

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

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

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

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

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

(c) Penalties provided for in this section are recoverable in an action brought by the department. The action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on by the parties in the action, or in the district court having jurisdiction over the defendant.

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

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

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

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

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

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

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

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

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

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

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

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

(10) Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed."

**Section 96.** Section 82-4-304, MCA, is amended to read:

**"82-4-304. Exemption – works performed prior to promulgation of rules.** This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the ~~board's~~ *initial* rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the ~~board's~~ *initial* rules regarding those activities. If, after the date of promulgation of *initial* rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules."

**Section 97.** Section 82-4-309, MCA, is amended to read:

**"82-4-309. Exemption – operations on federal lands.** This part ~~shall not be applicable~~ *does not apply* to operations on certain federal lands as specified by the ~~board~~ *department*, provided it is first determined by the ~~board~~ *department* that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part."

**Section 98.** Section 82-4-321, MCA, is amended to read:

**"82-4-321. Administration.** The department is charged with the responsibility of administering this part. ~~In order to implement its terms and provisions, the board shall from time to time promulgate such and adopting rules as the board shall deem necessary.~~ The department shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."

**Section 99.** Section 82-4-332, MCA, is amended to read:

**"82-4-332. Exploration license.** (1) An exploration license must be issued to any applicant who:

- (a) pays a fee of \$100 to the department;

(b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department;

(c) is not in default of any other reclamation obligation under this law.

(2) An application for an exploration license must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The ~~board~~ *department* shall by rule determine the precise nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.”

**Section 100.** Section 82-4-335, MCA, is amended to read:

“**82-4-335. Operating permit – limitation – fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in subsection (2), a separate final operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner’s land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner’s land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner’s permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner’s consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The ~~board~~ department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator, the engineer of record if applicable, and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

**Section 101.** Section 82-4-338, MCA, is amended to read:

**"82-4-338. Performance bond.** (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the ~~board~~ *department*, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, [during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or] until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over \$5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance

of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the ~~board~~ *board* under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the ~~board~~ *board* determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the ~~board~~ *board* within 30 days of receipt of the ~~board's~~ decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a

temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless the department approves or denies the complete application within 2 years of submission. The applicant may agree to an extension of this deadline.

(d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

(8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an assessment of the effectiveness of the changes and any potential negative environmental impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable level or may have potentially significant negative environmental impacts.

(b) If the department determines that preparation of an environmental impact statement is necessary, the permittee shall pay the department's costs pursuant to 75-1-205.

(9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(10) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the

license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in subsection (10)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department. (Bracketed language in subsection (1)(a) terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)"

**Section 102.** Section 82-4-339, MCA, is amended to read:

**"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by ~~rules of the board~~ *rule* and each year after that date until reclamation is completed and approved, the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

- (a) identify the permittee and the permit number;
- (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
- (c) estimate acreage to be newly disturbed by operation in the next 12-month period;
- (d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);
- (e) update the information required in 82-4-335(5)(a); and
- (f) update any maps previously submitted or specifically requested by the department. The maps must show:
  - (i) the permit area;
  - (ii) the unit of disturbed land;
  - (iii) the area to be disturbed during the next 12-month period;
  - (iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.”

**Section 103.** Section 82-4-342, MCA, is amended to read:

“**82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) The ~~board~~ *department* may by rule establish criteria for the classification of amendments as major or minor. The ~~board~~ *department* shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

(ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and

(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee’s equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

(i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g);

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use; and

(k) modifications to a tailings storage facility that result in a minor expansion to the facility if:

(i) the proposed modification is certified by the seal of the engineer of record;

(ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and

(iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section.”

**Section 104.** 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~~ 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) 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 105.** Section 82-4-406, MCA, is amended to read:

**“82-4-406. Exemption – opencut operations on federal and state lands.** This part is not applicable to operations on certain federal and state lands as specified by the ~~board~~ *department*, provided it is first determined by the ~~board~~ *department* that laws, regulations, or rules administered or issued by the federal or state agency administering or having jurisdiction over the affected land impose controls for opencut operations on those lands equal to or greater than those imposed by this part.”

**Section 106.** Section 82-4-422, MCA, is amended to read:

**“82-4-422. Powers, duties, and functions.** (1) The department has the powers, duties, and functions to:

(a) issue permits when, on the basis of the information set forth in the application and an evaluation of the proposed opencut operations, the department finds that the requirements of this part and rules adopted to implement this part will be observed;

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited;

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; and

(e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

(2) The ~~board~~ *department* shall:

(a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;

(b) adopt rules:

(i) establishing uniform procedures for filing of necessary records;

(ii) providing procedures for the issuance of permits and filing of annual reports; and

(iii) providing other administrative requirements ~~that the board considers necessary to implement this part; and~~.

(3) ~~The board shall~~ *conduct* hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry.”

**Section 107.** Section 82-4-437, MCA, is amended to read:

**“82-4-437. Annual report – fees.** (1) For each opencut operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the ~~board~~ department.

(2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the report.

(b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in subsection (2)(a).

(3) The department:

(a) shall require the operator to pay the following fees:

(i) \$1,500 for each permit application submitted pursuant to 82-4-432(1); and

(ii) for each amendment application submitted pursuant to 82-4-432(11):

(A) \$750 if the date of the amendment application is 10 years or less from the date of the permit approval; or

(B) \$1,500 if the date of the amendment application is more than 10 years from the date of the permit approval; and

(b) shall adopt rules for applications or responses that are administrative.

Fees, if any, for administrative actions identified under this subsection (3) may not exceed \$250.

(4) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section.”

**Section 108.** Section 82-4-445, MCA, is amended to read:

**“82-4-445. 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~~ department may acquire the necessary property by gift or purchase, or 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 109.** Section 82-4-1001, MCA, is amended to read:

“**82-4-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator’s prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator’s action;

(e) the violator’s good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator’s financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82-4-254, the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a “supplemental environmental project” is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

(5) ~~The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.”~~

**Section 110.** Section 82-15-102, MCA, is amended to read:

**“82-15-102. Enforcement of part – rules.** (1) Except as provided in subsection (2), this part must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) ~~The board of environmental review~~ *department of environmental quality* shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The ~~board~~ *department of environmental quality* shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the ~~board~~ *department of environmental quality* determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether.”

**Section 111. Repealer.** The following sections of the Montana Code Annotated are repealed:

75-6-103. Duties of board.

75-10-106. Duties of board.

82-4-111. Rules of board -- hearings.

82-4-204. Board rules.

**Section 112. Transition.** Rulemaking authority and existing rules under the jurisdiction of the board of environmental review are transferred to the department of environmental quality on [the effective date of this act].

**Section 113. Effective date.** [This act] is effective July 1, 2021.

Approved April 30, 2021

## CHAPTER NO. 325

[SB 239]

AN ACT ESTABLISHING THE UNIFORM DIRECTED TRUST ACT; PROVIDING FOR APPLICABILITY; PRESERVING COMMON LAW; PROVIDING EXCEPTIONS; DETAILING THE POWERS, LIMITATIONS, AND DUTIES OF TRUST DIRECTORS; ESTABLISHING THE DUTY AND

LIABILITY OF CERTAIN TRUSTEES; PROVIDING FOR COTRUSTEES; PROVIDING FOR ACTIONS AGAINST AND JURISDICTION OVER TRUST DIRECTORS; PROVIDING FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION; SPECIFYING THIS ACT'S RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; PROVIDING DEFINITIONS; AMENDING SECTIONS 32-1-107, 72-38-103, 72-38-105, 72-38-603, AND 72-38-703, MCA; AND REPEALING SECTION 72-38-808, MCA.

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

**Section 1. Short title.** [Sections 1 through 18] may be cited as the Uniform Directed Trust Act.

**Section 2. Definitions.** In [sections 1 through 18]:

(1) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, [sections 1 through 18], or law of this state other than [sections 1 through 18 pertaining to trusts.

(2) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

(3) "Directed trustee" means a trustee that is subject to a trust director's power of direction.

(4) "Person" has the meaning in section 72-38-103(12).

(5) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in [section 5(2)].

(6) "Settlor" has the meaning in section 72-38-103(18).

(7) "State" has the meaning in section 72-38-103(20).

(8) "Terms of a trust" means:

(a) except as otherwise provided in subsection (8)(b), the manifestation of the settlor's intent regarding a trust's provision as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(b) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under section 72-38-111.

(9) "Trust director" means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) "Trustee" has the meaning in section 72-38-103(23).

**Section 3. Application – principal place of administration.**

(1) [Sections 1 through 18] apply to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(a) if the trust was created before October 1, 2021, [sections 1 through 18] apply only to a decision or action occurring on or after October 1, 2021; and

(b) if the principal place of administration of the trust is changed to this state on or after October 1, 2021, [sections 1 through 18] apply only to a decision or action occurring on or after the date of the change.

(2) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust that designate the principal place of administration of the trust are valid and controlling if:

(a) a principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(b) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or

(c) all or part of the administration occurs in the designated jurisdiction.

**Section 4. Common law and principles of equity.** The common law and principles of equity supplement [sections 1 through 18], except to the extent modified by [sections 1 through 18] or law of this state other than [sections 1 through 18].

**Section 5. Exclusions.** (1) In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(2) [Sections 1 through 18] do not apply to a:

(a) power of appointment;

(b) power to appoint or remove a trustee or trust director;

(c) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(d) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(i) the beneficiary; or

(ii) another beneficiary represented by the beneficiary under sections 72-38-301 through 72-38-305 with respect to the exercise or nonexercise of the power; or

(e) power over a trust if:

(i) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(ii) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986, as amended, and regulations issued under it, as amended.

(3) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property, which is exercisable while the person is not serving as a trustee, is a power of appointment and not a power of direction.

**Section 6. Powers of trust director.** (1) Subject to [section 7], the terms of a trust may grant a power of direction to a trust director.

(2) Unless the terms of a trust provide otherwise:

(a) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection (1); and

(b) trust directors with joint powers shall act by majority decision.

**Section 7. Limitations on trust director.** A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under [section 6(2)(a)] regarding:

(1) a payback provision in the terms of a trust necessary to comply with the reimbursement requirements of medicaid law in section 1917 of the Social Security Act, 42 U.S.C. 1396p(d)(4)(A), as amended, and regulations issued under it, as amended; and

(2) a charitable interest in the trust, including notice regarding the interest to the attorney general.

**Section 8. Duty and liability of trust director.** (1) Subject to subsection (2), with respect to a power of direction or further power under [section 6(2)(a)]:

(a) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(i) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(ii) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(b) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than [sections 1 through 18] to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under [sections 1 through 18].

(3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

**Section 9. Duty and liability of directed trustee.** (1) Subject to subsection (2), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under [section 6(2)(a)], and the trustee is not liable for the action.

(2) A directed trustee may not comply with a trust director's exercise or nonexercise of a power of direction or further power under [section 6(2)(a)] to the extent that by complying the trustee would engage in willful misconduct.

(3) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(a) the breach involved the trustee's or other director's willful misconduct;

(b) the release was induced by improper conduct of the trustee or other director in procuring the release; or

(c) at the time of the release, the director did not know the material facts relating to the breach.

(4) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(5) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

**Section 10. Duty to provide information to trust director or trustee.** (1) Subject to [section 11], a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(a) the powers or duties of the trustee; and

(b) the powers or duties of the director.

(2) Subject to [section 11], a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(a) the powers or duties of the director; and

(b) the powers or duties of the trustee or other director.

(3) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(4) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

**Section 11. No duty to monitor, inform, or advise.** (1) Unless the terms of a trust provide otherwise:

(a) a trustee does not have a duty to:

(i) monitor a trust director; or

(ii) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(b) by taking an action described in subsection (1)(a), a trustee does not assume the duty excluded by subsection (1)(a).

(2) Unless the terms of a trust provide otherwise:

(a) a trust director does not have a duty to:

(i) monitor a trustee or another trust director; or

(ii) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(b) by taking an action described in subsection (2)(a), a trust director does not assume the duty excluded by subsection (2)(a).

**Section 12. Application to cotrustee.** The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under [sections 9 through 11].

**Section 13. Limitation of action against trust director.** (1) An action against a trust director for breach of trust must be commenced within the same limitation period as under 72-38-1005 for an action for breach of trust against a trustee in a like position and under similar circumstances.

(2) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under 72-38-1005 in an action for breach of trust against a trustee in a like position and under similar circumstances.

**Section 14. Defenses in action against trust director.** In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

**Section 15. Jurisdiction over trust director.** (1) By accepting appointment as a trust director of a trust subject to [sections 1 through 18], the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(2) This section does not preclude other methods of obtaining jurisdiction over a trust director.

**Section 16. Office of trust director.** Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(1) acceptance under 72-38-701;

(2) giving of bond to secure performance under 72-38-702;

(3) reasonable compensation under 72-38-708;

(4) resignation under 72-38-705;

(5) removal under 72-38-706; and

(6) vacancy and appointment of successor under 72-38-704.

**Section 17. Uniformity of application and construction.** In applying and construing this uniform act, 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 18. Relation to electronic signatures in global and national commerce act.** [Sections 1 through 18] modify, limit, or supersede the 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 19.** Section 32-1-107, MCA, is amended to read:

**“32-1-107. Trust company defined – purposes for which may be formed.** The term “trust company” means any corporation that is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive money in trust and to accumulate the money at rates of interest as may be obtained or agreed upon or to allow interest on the money as may be agreed upon;

(2) to accept and execute all trusts and perform the duties committed to them by any person or by any corporations or may be committed or transferred to them by order of any of the courts of record of this state or any other state or of the United States;

(3) to take and accept by grant, assignment, transfer, devise, or bequest and hold any real or personal estate or trust created in accordance with the laws of this state or any other state or of the United States and execute the legal trusts in regard to the same on the terms as may be declared, established, or agreed upon in regard to the estate or trust;

(4) to act as agent for the investment of money for other persons or corporations and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon;

(5) *except as provided in [sections 1 through 18]*, to accept from and execute trusts for married persons in respect to their individual property, whether real or personal, and act as agents for them in the management of the property and generally to have and exercise powers as are usually had and exercised by trust companies;

(6) *except as provided in [sections 1 through 18]*, to act as trustee, assignee, or receiver in all cases where it is lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver and to be appointed a trustee, assignee, or receiver and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors or of the estate of any person of unsound mind, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates;

(7) to loan money upon unencumbered real estate, collateral, or personal security and execute and issue notes and debentures payable at a future date and to pledge its mortgages upon real estate and other securities as security for the notes and debentures;

(8) to buy and sell:

(a) government, state, county, municipal, and other bonds. The trust company may invest in United States obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(b) all kinds of negotiable, nonnegotiable, and commercial paper, stocks, and other investment securities; and

(c) gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange;

(9) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors; to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, securities, and other valuable and personal property; to collect coupons, interest, and dividends on securities described in this section; and to rent out the use of safes and other receptacles on their premises upon terms and for compensation as may be agreed upon."

**Section 20.** Section 72-38-103, MCA, is amended to read:

**"72-38-103. Definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

(3) "Beneficiary" means a person who:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust or portion of a trust created for a charitable purpose described in 72-38-405(1).

(5) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual.

(6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7) "Guardian" means a person appointed by the court, by a parent, or by a spouse to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

(8) "Interested person" means:

(a) the trustee;

(b) the qualified beneficiaries who are entitled to notice; and

(c) the attorney general if the petition is related to a charitable trust subject to the jurisdiction of the attorney general.

(9) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(10) "Jurisdiction", with respect to a geographic area, includes a state or country.

(11) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether mandatory or discretionary, or who holds a presently exercisable power of appointment over trust property. The term includes a charitable organization only if it is expressly designated to receive distributions under the terms of the charitable trust.

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(13) “Power of withdrawal” means a presently exercisable general power of appointment other than a power:

- (a) exercisable by a trustee and limited by an ascertainable standard; or
- (b) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(14) (a) “Principal place of administration” means the usual place *where in which* the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust unless otherwise designated by the terms of the trust as provided in 72-38-108.

(b) If the principal place of administration of the trust cannot be determined under subsection (14)(a), then it must be determined as follows:

- (i) if the trust has a single trustee, the principal place of administration of the trust is the trustee’s residence or usual place of business; or
- (ii) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

(15) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(16) “Qualified beneficiary” means a beneficiary who on the date the beneficiary’s qualification is determined:

- (a) is a distributee or permissible distributee of trust income or principal;
- (b) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subsection (16)(a) terminated on that date without causing the trust to terminate; or
- (c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(17) “Revocable”, as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(18) “Settlor” means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(19) “Spendthrift provision” means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(20) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(21) “Terms of a trust” means: ~~the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding;~~

- (a) *except as otherwise provided in subsection (21)(b), the manifestation of the settlor’s intent regarding a trust’s provisions as:*
  - (i) *expressed in the trust instrument; or*

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(b) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under 72-38-111.

(22) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(23) "Trustee" includes an original, additional, and successor trustee and a cotrustee."

**Section 21.** Section 72-38-105, MCA, is amended to read:

**"72-38-105. Default and mandatory rules.** (1) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(2) The terms of a trust prevail over any provision of this chapter except:

(a) the requirements for creating a trust;

(b) *subject to [sections 9, 11, and 12]*, the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(c) the requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(d) the power of the court to modify or terminate a trust under 72-38-410 through 72-38-416;

(e) the effect of a spendthrift provision;

(f) the power of the court under 72-38-702 to require, dispense with, or modify or terminate a bond;

(g) the power of the court under 72-38-708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high;

(h) the effect of an exculpatory term under 72-38-1008;

(i) the rights under 72-38-1010 through 72-38-1013 of a person other than a trustee or beneficiary;

(j) the periods of limitation for commencing a judicial proceeding;

(k) the power of the court to take the action and exercise the jurisdiction that may be necessary in the interests of justice; and

(l) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in 72-38-201 and 72-38-205."

**Section 22.** Section 72-38-603, MCA, is amended to read:

**"72-38-603. Settlor's powers -- powers of withdrawal.**

(1) ~~Notwithstanding any other provision in this chapter, while a trust is revocable, all rights of the beneficiaries, including the right to consent to any action, are exercisable solely by the settlor, and all duties of the trustee, including the duty to provide notice, are owed exclusively to the settlor. To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.~~

(2) *To the extent a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee, including the duty to provide notice, are owed exclusively to, the settlor.*

(2)(3) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.”

**Section 23.** Section 72-38-703, MCA, is amended to read:

**“72-38-703. Cotrustees.** (1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(3) *A Subject to [section 12],* a cotrustee shall participate in the performance of a trustee’s function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(6) Except as otherwise provided in subsection (7), a trustee who does not join in an action of another trustee is not liable for the action.

(7) ~~Each~~ *Subject to [section 12], each* trustee shall exercise reasonable care to:

(a) prevent a cotrustee from committing a serious breach of trust; and

(b) compel a cotrustee to redress a serious breach of trust.

(8) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.”

**Section 24. Repealer.** The following sections of the Montana Code Annotated are repealed:

72-38-808. Powers to direct.

**Section 25. Codification instruction.** [Sections 1 through 18] are intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [sections 1 through 18].

Approved April 30, 2021

## CHAPTER NO. 326

[SB 249]

AN ACT REVISING LAWS RELATED TO FUNDING OF THE MONTANA GREATER SAGE-GROUSE STEWARDSHIP ACT; AUTHORIZING A COST-SHARING AGREEMENT BETWEEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; REVISING THE AMOUNT OF ADMINISTRATIVE FEES THAT MAY BE PAID FROM THE SAGE GROUSE STEWARDSHIP ACCOUNT; RECODIFYING THE MONTANA GREATER SAGE-GROUSE STEWARDSHIP ACT IN TITLE 87; AMENDING SECTION 76-22-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Agreement for payment of costs for implementation of Montana Greater Sage-Grouse Stewardship Act.** Subject to appropriation by the legislature, the department of fish, wildlife, and parks may enter into a cost-sharing agreement with the department of natural resources and conservation to pay costs associated with the implementation of the Montana Greater Sage-Grouse Stewardship Act.

**Section 2.** Section 76-22-109, MCA, is amended to read:

~~“76-22-109. (Temporary) Sage grouse stewardship account.~~

~~(1) There is a sage grouse stewardship account in the state special revenue fund established in 17-2-102. Money deposited in the account is statutorily appropriated, as provided in 17-7-502, and must be used for the administration of and pursuant to the provisions of this part to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people.~~

~~(2) The following funds must be deposited in the account:~~

~~(a) each fiscal year, the amount provided in 15-1-122 that is transferred to the account from the state general fund;~~

~~(b) money received by the department in the form of grants, gifts, transfers, bequests, payments for credits or financial contributions made pursuant to 76-22-111, and donations, including donations limited in their purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account; and~~

~~(c) any interest or income earned on the account.~~

~~(3) Subject to subsections (4) and (5), the department shall make disbursements from the account to projects approved by the oversight team to receive grants.~~

~~(4) The majority of the funds in the account may not be disbursed before the habitat quantification tool has been adopted. The habitat quantification tool must be applied to any project funded after the habitat quantification tool has been adopted. The majority of the account funds must be awarded to projects that generate credits that are available for compensatory mitigation under 76-22-111. When selecting projects to receive funds, the oversight team shall prioritize projects that maximize the amount of credits generated per dollars of funds awarded.~~

~~(5) Money deposited in the account may not be used:~~

~~(a) for fee simple acquisition of private land;~~

~~(b) to purchase water rights;~~

~~(c) to purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms; or~~

~~(d) to allow the release of any species listed under 87-5-107 or the federal Endangered Species Act, 16 U.S.C. 1531, et seq.~~

~~(6) Administrative costs paid from the account are limited to \$400,000 in each fiscal year.~~

~~(7) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account. (Terminates June 30, 2021--sec. 8, Ch. 360, L. 2017.)~~

**76-22-109. (Effective July 1, 2021) Sage grouse stewardship account.** (1) There is a sage grouse stewardship account in the state special revenue fund established in 17-2-102. Money deposited in the account is statutorily appropriated, as provided in 17-7-502, and must be used for the administration of and pursuant to the provisions of this part to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people.

(2) The following funds must be deposited in the account:

(a) money received by the department in the form of grants, gifts, transfers, bequests, payments for credits or financial contributions made pursuant to 76-22-111, and donations, including donations limited in their purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account; and

(b) any interest or income earned on the account.

(3) Subject to subsections (4) and (5), the department shall make disbursements from the account to projects approved by the oversight team to receive grants.

(4) The majority of the funds in the account may not be disbursed before the habitat quantification tool has been adopted. The habitat quantification tool must be applied to any project funded after the habitat quantification tool has been adopted. The majority of the account funds must be awarded to projects that generate credits that are available for compensatory mitigation under 76-22-111. When selecting projects to receive funds, the oversight team shall prioritize projects that maximize the amount of credits generated per dollars of funds awarded.

(5) Money deposited in the account may not be used:

(a) for fee simple acquisition of private land;

(b) to purchase water rights;

(c) to purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms; or

(d) to allow the release of any species listed under 87-5-107 or the federal Endangered Species Act, 16 U.S.C. 1531, et seq.

(6) ~~Administrative costs paid from the account are limited to \$400,000~~ *Up to \$25,000 may be paid from the account in each fiscal year for costs associated with meetings of the oversight team.*

(7) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.”

**Section 3. Directions to code commissioner.** (1) The code commissioner is instructed to renumber sections currently in Title 76, chapter 22, part 1, into a new part in Title 87, chapter 5.

(2) The code commissioner is instructed to change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2021 legislature, to reflect the new section numbers assigned pursuant to this section.

(3) Any section enacted by the 2021 legislature that is to be codified in Title 76, chapter 22, part 1, must be codified as an integral part of the new part, and the provisions of the new part apply to the enacted sections.

**Section 4. Effective date.** [This act] is effective July 1, 2021.

**Section 5. Contingent termination.** (1) If the department of fish, wildlife, and parks and the department of natural resources and conservation do not sign an agreement pursuant to [section 1] by [the effective date of this act], then [sections 1 and 2] are void.

(2) If an agreement between the department of fish, wildlife, and parks and the department of natural resources and conservation pursuant to [section 1] is terminated prior to the expiration date of the agreement, then [sections 1 and 2] are void.

(3) If the department of fish, wildlife, and parks and the department of natural resources and conservation do not enter into a renewal agreement prior to the expiration date of an agreement, then [sections 1 and 2] are void on the expiration date of the agreement.

(4) If a court of competent jurisdiction determines that an agreement entered into pursuant to [section 1] is invalid, then [sections 1 and 2] are void on the date the court's judgment is final.

(5) If the department of fish, wildlife, and parks receives written notice from the United States fish and wildlife service that an agreement entered into pursuant to [section 1] will result in a loss of federal fish and wildlife funds being disbursed to the department of fish, wildlife, and parks, then [sections 1 and 2] are void.

(6) The department of fish, wildlife, and parks shall notify the code commissioner of the occurrence of any contingency provided for in this section.

Approved April 30, 2021

## CHAPTER NO. 327

[SB 251]

AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, 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 27-1-202, MCA, is amended to read:

**"27-1-202. Right to compensatory damages.** Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation ~~therefor~~ for it in money, which is called damages. *The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308.*"

**Section 2.** Section 27-1-302, MCA, is amended to read:

**"27-1-302. Damages to be reasonable.** (1) *Subject to subsection (2), Damages damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.*

(2) *In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice.*"

**Section 3.** Section 27-1-307, MCA, is amended to read:

**"27-1-307. Definitions.** As used in 27-1-308 and this section:

(1) “Collateral source” means a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of the plaintiff’s immediate family if the plaintiff is obligated to repay a member of the plaintiff’s immediate family.

(2) “Health care provider” includes hospitals, institutions, laboratories, doctors, physicians, optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

(3) (a) “Medical services or treatment” means any actions taken by a health care provider to observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a plaintiff’s injury, condition, disease, or disorder, or symptoms of a plaintiff’s injury, condition, disease, or disorder.

(b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider’s direction.

(2)(4) “Person” includes individuals, corporations, associations, societies, firms, partnerships, joint-stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

(3)(5) (a) “Plaintiff” means a person who alleges to have sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery.

(b) The term includes:

(i) a legal representative;

(ii) a person with a wrongful death or surviving cause of action;

(iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services; and

(iv) any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death.”

**Section 4.** Section 27-1-308, MCA, is amended to read:

**“27-1-308. Collateral source reductions in Allowed recovery and permissible evidence – reasonable value of medical or health care services or treatment – actions arising from bodily injury or death – subrogation rights.** (1) (a) *The purpose of this section is to abrogate the common law collateral source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by plaintiffs as damages for medical services or treatment.*

(b) *This section does not modify duties owed in accordance with 33-18-201.*

(2) In an action arising from bodily injury or death when the total award against all defendants is in excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:

(a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and necessary medical services or treatment to the plaintiff;

(b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and payable to health care providers for reasonable and necessary medical services or treatment rendered to the plaintiff; and

(c) necessary to provide for any future reasonable and necessary medical services or treatment for the plaintiff.

(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:

(a) the amount the plaintiff paid for the 5 years prior to the date of injury;

(b) the amount the plaintiff paid from the date of injury to the date of judgment; and

(c) the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).

(3) The jury shall determine its award for the reasonable value of medical services or treatment without consideration of any charges for medical services or treatment that were included on health care providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible to establish the reasonable value of medical services or treatment is limited to evidence identifying the amounts actually: at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

(a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest

(a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial obligation for medical services or treatment that the plaintiff received; and

(b) reduce the award by the amount deposited. The amount deposited and any interest on that amount are subject to the further order of the court, pursuant to the requirements of this section. necessary to satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public or government-sponsored health care benefit program.

(c) necessary to satisfy the financial obligation for any reasonable and necessary future medical services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the amount for which the future charges of health care providers could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible.

(4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff, then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount of the payment or other collateral source as defined in 27-1-307(1).

(5) Except for subrogation rights specifically granted by state or federal law, law or provided by contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if for an award is reduced by that amount under entered as provided in subsection (4)(2)."

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

**Section 6. Applicability.** [This act] applies to claims that accrue on or after [the effective date of this act].

Approved April 30, 2021

## CHAPTER NO. 328

[SB 253]

AN ACT GENERALLY REVISING MEDICAL CARE SAVINGS ACCOUNT LAWS; ALLOWING INVESTMENT OF MEDICAL CARE SAVINGS ACCOUNT FUNDS IN STOCKS, BONDS, AND MUTUAL FUNDS; PROVIDING THAT INVESTMENT OPTIONS THAT QUALIFY UNDER A FEDERAL HEALTH SAVINGS ACCOUNT ARE PERMISSIBLE; PROVIDING A TRANSITION CLAUSE TO ALLOW A TAX-FREE ROLLOVER FROM AN EXISTING MEDICAL CARE SAVINGS ACCOUNT; AMENDING SECTION 15-61-204, 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 15-61-204, MCA, is amended to read:

**"15-61-204. Administration of account.** (1)(a) An account administrator shall administer the medical care savings account from which the payment of claims is made and, except as provided in subsection (1)(b), has a fiduciary duty to the person for whose benefit the account is administered.

(b) Except for reporting and remitting of penalties to the department of revenue, a financial institution shall administer a medical care savings account as a regular deposit or share account and has the same rights and duties pertaining to the account as pertain to a regular deposit or share account the person for whose benefit the account is administered. A financial institution may provide investment options to each employee and account holder, including a regular deposit account, share account, stock account, bond account, mutual fund account, or a combination of these accounts. An investment option that is allowable for a health savings account under 26 U.S.C. 223 automatically qualifies. Notwithstanding any other provision of this chapter, a financial institution is not responsible for:

(i) losses that are based on an investment option that is selected by an employee or account holder; and

(ii) determining whether a medical expense is eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals are for eligible and nonreimbursable medical expenses.

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying eligible medical expenses or for paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses or for a long-term care insurance policy or annuity that is otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses. The burden of proving that a withdrawal from a medical care savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator or the employer of the account holder.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or account holder to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) The employee or account holder must annually report to the department the starting balance and ending balance of a medical care savings account.

(7) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time that the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

(8) In the case of an account administrator who is also the account holder or an employee:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution or other holder of the account;

(c) documentation of eligible medical expenses must be maintained but is not required to be submitted to the account administrator;

(d) contributions to a medical care savings account must be established in a separate account and be segregated from other funds;

(e) the account holder is subject to the same yearend reporting requirements as all other account administrators; and

(f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible medical expenses to the state.”

**Section 2. Transition – rollover.** Each employee and account holder with a medical care savings account that was in existence before [the effective date of this act] may withdraw money in the account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

**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.

**Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020.

Approved April 30, 2021

## CHAPTER NO. 329

[SB 257]

AN ACT PROHIBITING LOCAL GOVERNMENTS FROM ENACTING CERTAIN FEES, TAXES, OR PENALTIES REGARDING CARBON USE; AMENDING SECTION 7-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Carbon fees, taxation, or penalties – prohibition.** (1) A local government may not enact, adopt, implement, enforce, or refer to the electorate a rule, order, ordinance, or policy that includes fees, taxation, or penalties based on carbon or carbon use.

(2) (a) Fees, taxation, or penalties based on carbon or carbon use include formal or informal rules, orders, ordinances, or policies, including but not limited to:

(i) charges placed on resident or business electrical, natural gas, propane, or other energy bills or statements based on usage or carbon content; or

(ii) any other method, tax, or fee levied on the carbon content of fuels or electricity in the transportation or energy sector.

(b) This subsection (2)(b) does not include energy conservation bonds as provided in 7-7-141 or energy performance contracts pursuant to Title 90, chapter 4, part 11.

(3) Nothing in this section prohibits a local government from participating in a service offered through a tariff approved by the public service commission.

(4) For the purposes of this section, “local government” includes a county, a consolidated government, an incorporated city or town, or a special district.

**Section 2.** Section 7-1-111, MCA, is amended to read:

**“7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12; *and*

(22) *any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with [section 1]."*

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [section 1].

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

Approved April 30, 2021

## CHAPTER NO. 330

[SB 258]

AN ACT RENAMING THE TREASURE STATE ENDOWMENT PROGRAM AND FUND TO THE MONTANA COAL ENDOWMENT PROGRAM AND FUND; AND AMENDING SECTIONS 17-5-703, 17-7-111, 22-3-1306, 90-1-204, 90-6-701, 90-6-702, 90-6-710, AND 90-6-715, MCA.

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

**Section 1.** Section 17-5-703, MCA, is amended to read:

**"17-5-703. (Temporary) Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a ~~treasure state~~ *Montana coal* endowment fund;

(c) a ~~treasure state~~ *Montana coal* endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund;

(f) a big sky economic development fund; and

(g) a school facilities fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds

payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (4) and (5).

(3) (a) The state treasurer shall monthly transfer from the ~~treasure state Montana coal~~ endowment fund to the ~~treasure state Montana coal~~ endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the ~~treasure state Montana coal~~ endowment special revenue account must be retained in the ~~treasure state Montana coal~~ endowment fund.

(b) The state treasurer shall monthly transfer from the ~~treasure state Montana coal~~ endowment regional water system fund to the ~~treasure state Montana coal~~ endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the ~~treasure state Montana coal~~ endowment regional water system special revenue account must be retained in the ~~treasure state Montana coal~~ endowment regional water system fund.

(4) (a) Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in 20-9-380(1) 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is \$200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance tax permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the school facilities fund to the account established in 20-9-525 the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in 20-9-525 must be retained in the school facilities fund.

(5) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2031--secs. 1 through 3, Ch. 305, L. 2015.)

**17-5-703. (Effective July 1, 2031) Coal severance tax trust funds.**

(1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a ~~treasure state~~ *Montana coal* endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund;

(e) a big sky economic development fund; and

(f) a school facilities fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (4) and (5).

(3) The state treasurer shall monthly transfer from the ~~treasure state~~ *Montana coal* endowment fund to the ~~treasure state~~ *Montana coal* endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the ~~treasure state~~ *Montana coal* endowment special revenue account must be retained in the ~~treasure state~~ *Montana coal* endowment fund.

(4) (a) Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in 20-9-380(1) 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is \$200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance tax permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the school facilities fund to the account established in 20-9-525 the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in 20-9-525 must be retained in the school facilities fund.

(5) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

**Section 2.** 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), 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, 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 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;

(h) energy cost saving information as required by 90-4-616; and

(i) 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 capital developments for:

(i) local infrastructure projects;

(ii) funding for energy development-impacted areas; and

(iii) the state long-range building program. Each recommendation for the capital developments long-range building program 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~~ *Montana coal* 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 the 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 3.** Section 22-3-1306, MCA, is amended to read:

**“22-3-1306. Priorities for funding – rulemaking.** (1) The department of commerce shall make recommendations for grants awarded under the historic preservation grant program to public or private entities for the preservation of historic sites, historical societies, or history museums in the state. The recommendations must be based on competitive criteria created by the department, as guided by the legislature. The criteria may include:

(a) the degree of economic stimulus or economic activity, including job creation and work creation for Montana contractors and service workers;

(b) the purpose of the project, including whether it provides features that establish or enhance security, climate control, or fire protection for museums or address infrastructure, maintenance, or building code issues;

(c) the timing of the project, including access to matching funds, if needed, and approval of permits so that work can be completed without delay;

(d) the historic or heritage value related to the state of Montana;

(e) the successful track record or experience of the organization directing the project; and

(f) the expected ongoing economic benefit to the state as a result of the project completion.

(2) The department of commerce shall adopt rules necessary to implement the historic preservation grant program. In adopting rules, the department shall look to the rules adopted for the ~~treasure state~~ *Montana coal* endowment program, the cultural and aesthetic grant program, and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs.”

**Section 4.** Section 90-1-204, MCA, is amended to read:

**“90-1-204. Priorities for funding – rulemaking.** (1) Under the big sky economic development program provided for in 90-1-201, the department must receive proposals for grants and loans from local governments and tribal governments. A local government shall work with an economic development organization on a proposal. The department shall work with the local government and the economic development organization or with an applicant tribal government in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program. In adopting rules, the department shall look to the rules adopted for the ~~treasure state~~ *Montana coal* endowment program and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs. To the extent feasible, the department shall employ an approach pertaining to the

use of funds so that, except as provided in subsection (2)(b), the needs of rural areas are balanced with the needs of the state's urban centers.

(b) For high-poverty counties, the department shall employ an approach pertaining to the use of funds that is intended to lower poverty levels in the county to a percentage at which the county no longer is defined as a high-poverty county.

(c) The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of funds by:

(i) local governments and tribal governments include but are not limited to:

(A) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;

(B) a grant or low-interest loan for relocation expenses for a basic sector company; and

(C) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company;

(ii) a certified regional development corporation or a tribal government include:

(A) support for business improvement districts and central business district redevelopment;

(B) industrial development;

(C) feasibility studies;

(D) creation and maintenance of baseline community profiles; and

(E) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds.

(d) (i) The rules must provide for distribution methods for financial assistance available to local governments and tribal governments. The rules must provide for distribution based upon the number of jobs expected to be created because of the funding.

(ii) Funding may not exceed \$5,000 for each expected job, except that funding for a project in a high-poverty county may not exceed \$7,500 for each expected job.

(iii) The rules must require equal matching funds for a grant or loan, except that the rules for a grant or a loan in a high-poverty county may allow a 50% to 100% match requirement for the high-poverty county.

(e) The rules may provide for greater incentives for a high-poverty county.

(f) The rules must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which a grant is given are not created.

(g) A grant or loan under the big sky economic development program may be made only for a new job that has an average weekly wage that meets or exceeds the lesser of 170% of Montana's current minimum wage or the current average weekly wage of the county in which the employees are to be principally employed. For purposes of this subsection (2)(g) and subject to subsection (2)(h), the department may consider the value of employee benefits in determining whether the wage requirements have been met.

(h) Nothing in subsection (2)(g) exempts an employer from minimum wage requirements."

**Section 5.** Section 90-6-701, MCA, is amended to read:

**"90-6-701. ~~Treasure state Montana coal endowment program created – definitions.~~** (1) (a) There is a ~~treasure state Montana coal endowment program~~ that consists of:

(i) the ~~treasure state Montana coal~~ endowment fund established in 1975-703;

(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The ~~treasure state~~ *Montana coal* endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, provided that no part of the loan may be made from retirement funds.

(2) Interest from the ~~treasure state~~ *Montana coal* endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part, to provide funding to the department of commerce for the administrative costs of the ~~treasure state~~ *Montana coal* endowment program [and the delivering local assistance grant program], and to repay loans from the board of investments.

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, a consolidated local government, a tribal government, a county or multicounty water, sewer, or solid waste district, or an authority as defined in 75-6-304.

(c) "~~Treasure state~~ *Montana coal* endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "~~Treasure state~~ *Montana coal* endowment program" means the local government infrastructure investment program established in subsection (1).

(e) "Tribal government" means a federally recognized Indian tribe within the state of Montana. (Bracketed language terminates June 30, 2021--sec. 31, Ch. 476, L. 2019.)"

**Section 6.** Section 90-6-702, MCA, is amended to read:

**"90-6-702. Purpose.** The purpose of the ~~treasure state~~ *Montana coal* endowment program is to assist local governments in funding infrastructure projects that will:

(1) create jobs for Montana residents;

(2) promote economic growth in Montana by helping to finance the necessary infrastructure;

(3) encourage local public facility improvements;

(4) create a partnership between the state and local governments to make necessary public projects affordable;

(5) support long-term, stable economic growth in Montana;

(6) protect future generations from undue fiscal burdens caused by financing necessary public works;

(7) coordinate and improve infrastructure financing by federal, state, local government, and private sources; and

(8) enhance the quality of life and protect the health, safety, and welfare of Montana citizens."

**Section 7.** Section 90-6-710, MCA, is amended to read:

**"90-6-710. Priorities for projects -- procedure -- rulemaking.** (1) The department of commerce must receive proposals for infrastructure projects from local governments on a continual basis. The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise

pertinent to the proposal. For the projects under 90-6-703(1)(a), the department shall prepare and submit two lists containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection (2) and this subsection. One list must contain the ranked and recommended bridge projects, and the other list must contain the remaining ranked and recommended infrastructure projects referred to in 90-6-701(3)(a). Each list must be prioritized pursuant to subsection (2) of this section, but the department may recommend up to 20% of the interest earnings anticipated to be deposited into the ~~treasure state~~ *Montana coal* endowment fund established in 17-5-703 during the following biennium for bridge projects. Before making recommendations to the governor, the department may adjust the ranking of projects by giving priority to urgent and serious public health or safety problems. The governor shall review the projects recommended by the department and shall submit the lists of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to infrastructure projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(e) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(f) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; and

(g) projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the ~~treasure state~~ *Montana coal* endowment program.

(5) The department shall report to each regular session of the legislature the status of all projects that have not been completed in order for the legislature to review each project's status and determine whether the authorized grant should be withdrawn."

**Section 8.** Section 90-6-715, MCA, is amended to read:

**"90-6-715. (Temporary) Special revenue account -- use.** (1) (a) The ~~treasure state~~ *Montana coal* endowment regional water system special revenue account may be used to:

(i) provide matching funds to plan and construct regional drinking water systems in Montana;

(ii) pay the debt service for regional water system bond issues;

(iii) provide funding of administrative expenses for state and local entities associated with regional drinking water systems; and

(iv) pay the costs of eligible projects on an interim basis pending the receipt of grant and loan funds by those systems or entities.

(b) Except for the debt service administrative expenses and payment of the costs of eligible projects on an interim basis provided for in subsection (1)(a), each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the ~~treasure-state~~ *Montana coal* endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710.

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stock water for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stock water for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of natural resources and conservation for eligible projects. (Terminates June 30, 2031--secs. 1 through 3, Ch. 305, L. 2015.)”

Approved April 30, 2021

## CHAPTER NO. 331

[SB 261]

AN ACT INCREASING THE MONETARY THRESHOLD FOR JURISDICTION IN JUSTICE COURT; AND AMENDING SECTIONS 3-10-301 AND 75-7-123, MCA.

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

**Section 1.** Section 3-10-301, MCA, is amended to read:

**“3-10-301. Civil jurisdiction.** (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices’ courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed ~~\$12,000~~ *\$15,000*, exclusive of court costs and attorney fees;

(b) in actions for damages not exceeding ~~\$12,000~~ *\$15,000*, exclusive of court costs and attorney fees, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding ~~\$12,000~~ *\$15,000*, exclusive of court costs and attorney fees, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed ~~\$12,000~~ *\$15,000*;

(e) in actions for a fine, penalty, or forfeiture not exceeding ~~\$12,000~~ *\$15,000* imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions for a fine, penalty, or forfeiture not exceeding ~~\$12,000~~ *\$15,000* imposed by a statute or assessed by an order of a conservation district for violation of Title 75, chapter 7, part 1;

(g) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed ~~\$12,000~~ *\$15,000*, though the penalty may exceed that sum;

(h) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed ~~\$12,000~~ *\$15,000*, exclusive of court costs and attorney fees;

(i) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15;

(j) to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual cost for restoration of a stream if the restoration does not exceed ~~\$12,000~~ *\$15,000*.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

**Section 2.** Section 75-7-123, MCA, is amended to read:

**"75-7-123. Penalties – restoration.** (1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is:

(a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500; or

(b) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.

(2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.

(3) In addition to a fine or a civil penalty under subsection (1), the person:

(a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or

(b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed ~~\$12,000~~ *\$15,000*. If the amount of liability for restoration exceeds ~~\$12,000~~ *\$15,000*, then the action must be brought in district court.

(4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601."

Approved April 30, 2021

**CHAPTER NO. 332**

[SB 280]

AN ACT REVISING VITAL STATISTICS LAWS REGARDING THE AMENDMENT OF BIRTH CERTIFICATE SEX DESIGNATIONS AND THE ISSUANCE OF REPLACEMENT BIRTH CERTIFICATES; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY AMEND A BIRTH CERTIFICATE SEX DESIGNATION ONLY ON RECEIPT OF A COURT ORDER INDICATING THAT THE SEX OF A PERSON HAS BEEN CHANGED BY SURGICAL PROCEDURE; DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO AMEND ADMINISTRATIVE RULES IN CONFORMITY WITH THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, in December 2017, the Department of Public Health and Human Services (DPHHS) adopted MAR Notice No. 37-807, which amended ARM 37.8.102 and 37.8.311 to allow an individual to correct the gender designation on the individual's birth certificate by providing to DPHHS a correction affidavit accompanied by: (1) a completed gender designation form certifying that the individual has undergone gender transition or has an intersex condition; (2) a government-issued identification displaying the correct gender designation; or (3) a certified copy of a court order indicating that the gender of the individual born in Montana has been changed; and

WHEREAS, prior to the adoption of MAR Notice No. 37-807, the sex designation on a birth certificate could only be amended if DPHHS received a certified copy of an order from a court indicating that the sex of an individual born in Montana had been changed by surgical procedure; and

WHEREAS, accurate vital statistics play an important role in society, and the rulemaking adopted in MAR Notice No. 37-807 should have been contemplated in the Legislature rather than through DPHHS rulemaking; and

WHEREAS, the Legislature intends to repeal the rulemaking adopted in MAR Notice No. 37-807 and enact into law the substance of the administrative rule existing prior to the adoption of MAR Notice No. 37-807.

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

**Section 1. Sex change designation on birth certificate.** (1) The sex of a person designated on a birth certificate may be amended only if the department receives a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of the person born in Montana has been changed by surgical procedure.

(2) The order must contain sufficient information for the department to locate the original birth certificate. If the person's name is to be changed, the order must indicate the person's full name as it appears on the original birth certificate and the full name to which it is to be amended.

(3) If the order directs the issuance of a new birth certificate that does not show amendments, the new birth certificate may not indicate on its face that it was amended.

(4) This section does not apply if the sex of a person was designated incorrectly on the original birth certificate due to a data entry error.

**Section 2. Direction to department of public health and human services.** The department of public health and human services shall amend ARM 37.8.102 and 37.8.311 in conformity with this act.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, part 2, apply to [section 1].

**Section 4. Effective date – applicability.** [This act] is effective on passage and approval and applies to amendments to sex designations in birth certificates that are received by the department of public health and human services on or after [the effective date of this act].

Approved April 30, 2021

## CHAPTER NO. 333

[SB 287]

AN ACT GENERALLY REVISING LAWS ON FINANCING PUBLIC PROJECTS; AND REVISING THE PROCESS FOR AWARDING PUBLIC FINANCING CONTRACTS.

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

**Section 1. Short title.** [Sections 2 through 4] may be cited as the “State Building Construction Loan Act of 2021”.

**Section 2. Definitions.** As used in [sections 2 through 4], unless the context clearly indicates otherwise, the following definitions apply:

(1) “Building” has the meaning given in 18-2-101.

(2) “Financial institution” means a bank as defined in 32-1-102 or other regulated lender as defined in 31-1-111(1) and (2).

(3) “Physical branch” means a physical location of a financial institution that accepts deposits from Montana citizens and businesses.

(4) “Public agency” means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state, including the board of regents and the Montana university system.

(5) (a) “State building construction loan” means a loan from a financial institution to a public agency to finance construction of one or more buildings of the public agency, obtained pursuant to the terms and conditions of [sections 2 through 4].

(b) The term does not include any bonds, notes or other obligations issued by public agencies, or loans obtained by public agencies, to finance construction of buildings or otherwise, that are sold or obtained pursuant to other provisions of state law.

**Section 3. Authority to use state building construction loans.**

(1) If a public agency is otherwise authorized to borrow money by obtaining a loan to finance the construction of one or more of its buildings, the public agency may obtain a state building construction loan in accordance with this part to finance all or a portion of the costs of the construction of one or more of its buildings.

(2) A public agency must obtain a state building construction loan by requesting interest rate proposals from multiple financial institutions that will not be acting as underwriters with respect to the state building construction loan.

(3) In the materials that solicit interest rate proposals for the state building construction loan, the public agency must provide that it will evaluate the proposals based solely on interest rate and the solicitation materials must describe the provisions of [section 4].

**Section 4. Selecting lender for state building construction loan – process.** (1) Except as provided in subsections (2) and (3), when selecting a financial institution to be the lender for a state building construction loan, a public agency shall select the financial institution that is the lowest responsible bidder in terms of interest rate, without regard to residency.

(2) In the event the lowest bidder does not have a physical branch located in the state, the public agency shall:

(a) determine if the next lowest bidder has a physical branch located in the state; and

(b) if, when multiplying the low bid by 1.025, the next lowest bid is at or less than the bid of the lowest bidder, notify the next lowest bidder and give that bidder 2 business days to offer a bid of equal terms.

(3) If the next lowest bidder offers an equal bid, the public agency shall select that bidder as the lender of its state building construction loan.

**Section 5. Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 2, chapter 17, and the provisions of Title 2, chapter 17, apply to [sections 2 through 4].

Approved April 30, 2021

## CHAPTER NO. 334

[SB 302]

AN ACT EXTENDING THE DEADLINE TO APPLY FOR WRITTEN AUTHORIZATION TO USE A NAVIGABLE RIVERBED; AMENDING SECTION 77-1-1112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 77-1-1112, MCA, is amended to read:

**“77-1-1112. Historic use of navigable riverbeds – authorization required – exemptions.** (1) A person using the bed of a navigable river below the low-water mark without written authorization from the department prior to October 1, 2011, who wants to continue use of the bed of a navigable river after October 1, 2011, shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement by ~~July 15, 2021~~ *July 15, 2025*.

(2) A person using the bed of a river below the low-water mark without written authorization from the department who wants to continue use of the bed after the date the river is determined to be a navigable river shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement within 5 years after the date that notice is issued by the department as provided in 77-1-1114.

(3) The application must include:

(a) an application fee of \$50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant’s predecessor in interest used the bed of a navigable river and that the use continues;

(ii) describing the acreage covered by the footprint prior to October 1, 2011, or, for applications under subsection (2), the acreage covered by the footprint prior to the date the river was determined to be navigable; and

(iii) demonstrating that the use applied for under this section is the use shown in the evidence provided in subsection (3)(c); and

(c) (i) aerial photographs demonstrating the use to which the application for authorization applies; or

(ii) other evidence of the use to which the application for authorization applies.

(4) The department shall issue the authorization for a lease, license, or easement if:

(a) the applicant provides evidence to satisfy the requirements of subsection (3);

(b) the applicant pays the application fee and the full market value of the footprint acreage;

(c) the department has, if necessary, made a site inspection of the use to which the application for authorization applies;

(d) the authorization is for only the acreage of the footprint historically used by the applicant or the applicant's predecessor in interest; and

(e) the authorization is approved by the board.

(5) Proceeds from the application fee must be deposited in the account in 77-1-1113 and must be used by the department to administer the provisions of this section.

(6) The full market value collected pursuant to subsection (4)(b) must be deposited in the appropriate trust fund established for receipt of income from the land over which an authorized use is granted.

(7) Issuance of an authorization pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(8) The department shall waive the survey requirements of 77-2-102 if the department determines that there is sufficient information available to define the boundaries of the proposed use for the purposes of recording the easement or issuing a license or lease.

(9) The requirements of this section do not apply to footprints:

(a) related to hunting, fishing, or trapping;

(b) that existed prior to November 8, 1889;

(c) for which the applicant can show an easement obtained from a state agency prior to October 1, 2011, or prior to the date the river was determined to be a navigable river; or

(d) associated with a power site regulated pursuant to Title 77, chapter 4, part 2.

(10) A person using the bed of a navigable river who is subject to this section may continue to use the bed of the navigable river for that purpose while applying for a lease, license, or easement or until the applicable timeframe for obtaining a lease, license, or easement expires. The state may not impede access to a footprint or use of a footprint during the applicable timeframe or after a lease, license, or easement is obtained.

(11) The provisions of this section do not restrict the power of the board to seek adjudication of title pursuant to 77-1-105."

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

Approved April 30, 2021

## CHAPTER NO. 335

[SB 309]

AN ACT GENERALLY REVISING STATE LOTTERY LAWS RELATING TO COMPENSATION OF LOTTERY EMPLOYEES; CLARIFYING THAT THE DIRECTOR OF THE MONTANA STATE LOTTERY IS EXEMPTED

FROM CERTAIN STATE EMPLOYEE PAY PROVISIONS; REMOVING THE REQUIREMENT THAT THE LOTTERY DIRECTOR'S SALARY BE EQUAL TO 90% OF THE SALARY OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION; REMOVING THE REQUIREMENT THAT THE SALARY OF THE ASSISTANT DIRECTOR OF THE LOTTERY BE EQUAL TO 90% OF THE SALARY OF THE LOTTERY DIRECTOR; AMENDING SECTIONS 2-18-103, 23-7-210, AND 23-7-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-18-103, MCA, is amended to read:

**“2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and eight professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) *director of the Montana state lottery and assistant director for security of the Montana state lottery;*
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- (15) executive director of the Montana wheat and barley committee;
- (16) commissioner of banking and financial institutions;
- (17) training coordinator for county attorneys;
- (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- (19) chief information officer in the department of administration;
- (20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218; and
- (21) the director of the office of state public defender provided for in 2-15-1029.”

**Section 2.** Section 23-7-210, MCA, is amended to read:

**“23-7-210. Director – appointment – compensation – qualifications.**

(1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery, including sports wagering. The director must be a full-time employee and may not engage in any other occupation.

(3) ~~The director's salary is equal to 90% of the salary of the director of the department of administration.~~"

**Section 3.** Section 23-7-212, MCA, is amended to read:

**"23-7-212. Assistant director for security – qualifications – duties – compensation.** (1) The director shall appoint an assistant director for security, who serves at the pleasure of the director.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security:

(a) must be responsible for a security division to ensure security, honesty, fairness, and integrity in the operation and administration of the state lottery, including but not limited to an examination of the background of all prospective employees, sales agents, lottery and sports wagering vendors, and contractors. The security division is designated a law enforcement agency for the purpose of administering this chapter.

(b) shall, in conjunction with the director, confer with the attorney general or the attorney general's designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the state lottery and establish a memorandum of understanding that contemplates investigatory and regulatory collaboration and assistance between the department of justice and the state lottery as considered necessary by both parties; and

(c) shall, in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

(4) ~~The salary of the assistant director for security is equal to 90% of the salary of the director of the lottery."~~

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

Approved April 30, 2021

## CHAPTER NO. 336

[SB 314]

AN ACT REVISING LAWS RELATED TO THE HARVEST OF WOLVES; PROVIDING LEGISLATIVE INTENT; REVISING RULEMAKING AUTHORITY; AND AMENDING SECTION 87-1-901, MCA.

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

**Section 1.** Section 87-1-901, MCA, is amended to read:

**"87-1-901. Gray wolf management – rulemaking – reporting.**

(1) Except as provided in subsection (2) (3), the commission shall establish by rule hunting and trapping seasons for wolves *with the intent to reduce the wolf population in this state to a sustainable level, but not less than the number of wolves necessary to support at least 15 breeding pairs.*

(2) For game management purposes, the commission *may apply different management techniques depending on the conditions in each administrative region with the most liberal harvest regulations applied in regions with the greatest number of wolves. In doing so, the commission may authorize:*

(a) the issuance of more than one Class E-1 or Class E-2 wolf hunting license to an applicant; ~~and~~

(b) the trapping of more than one wolf by the holder of a trapping license;

(c) *the harvest of an unlimited number of wolves by the holder of a single wolf hunting or wolf trapping license;*

(d) *during the wolf trapping season, the use of bait while hunting or trapping wolves as long as no trap or snare trap is set within 30 feet of exposed bait visible from above; and*

(e) *the hunting of wolves on private lands outside of daylight hours with the use of artificial light or night vision scopes.*

~~(2)~~(3) The commission shall adopt rules to allow a landowner or the landowner's agent to take a wolf on the landowner's property at any time without the purchase of a Class E-1 or Class E-2 wolf license when the wolf is a potential threat to human safety, livestock, or dogs. The rules must:

(a) be consistent with the Montana gray wolf conservation and management plan and the adaptive management principles of the commission and the department for the Montana gray wolf population;

(b) require a landowner or the landowner's agent who takes a wolf pursuant to this subsection ~~(2)~~ (3) to promptly report the taking to the department and to preserve the carcass of the wolf;

(c) establish a quota each year for the total number of wolves that may be taken pursuant to this subsection ~~(2)~~ (3); and

(d) allow the commission to issue a moratorium on the taking of wolves pursuant to this subsection ~~(2)~~ (3) before a quota is reached if the commission determines that circumstances require a limitation of the total number of wolves taken.

~~(3)~~(4) Public land permittees who have experienced livestock depredation must obtain a special kill permit authorized in 87-5-131(3)(b) to take a wolf on public land without the purchase of a Class E-1 or Class E-2 license.

~~(4)~~(5) The department shall report annually to the environmental quality council regarding the implementation of 87-5-131, 87-5-132, and this section."

Approved April 30, 2021

## CHAPTER NO. 337

[SB 328]

AN ACT REVISING REQUIREMENTS FOR RELEASING BONDS ON COAL MINES; DEFINING AFFECTED DRAINAGE BASIN; AMENDING SECTIONS 82-4-203 AND 82-4-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 82-4-203, MCA, is amended to read:

**"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) "Affected drainage basin" means an area of land where surface water and ground water quality and quantity are affected by mining activities and where they drain to a common point.

~~(3)~~(4) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

~~(4)~~(5) “Approximate original contour” means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

~~(5)~~(6) “Aquifer” means any geologic formation or natural zone beneath the earth’s surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

~~(6)~~(7) (a) “Area of land affected” means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

~~(7)~~(8) “Bench” means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

~~(8)~~(9) “Board” means the board of environmental review provided for in 2-15-3502.

~~(9)~~(10) “Coal conservation plan” means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(10)~~(11) (a) “Coal preparation” means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(11)~~(12) “Coal preparation plant” means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

~~(12)~~(13) “Contour strip mining” means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(13)~~(14) “Cropland” means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(14)~~(15) “Degree” means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(15)~~(16) “Department” means the department of environmental quality provided for in 2-15-3501.

~~(16)~~(17) “Developed water resources” means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

~~(17)~~(18) “Ephemeral drainageway” means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(18)~~(19) “Failure to conserve coal” means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(19)~~(20) “Fill bench” means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

~~(20)~~(21) “Fish and wildlife habitat” means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

~~(21)~~(22) “Forestry” means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

~~(22)~~(23) “Grazing land” means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

~~(23)~~(24) “Higher or better uses” means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

~~(24)~~(25) “Hydrologic balance” means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir,

and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

(25)(26) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(26)(27) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(27)(28) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

(b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated by the board of oil and gas conservation pursuant to Title 82, chapter 11.

(28)(29) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(29)(30) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

(30)(31) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(31)(32) "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

(32)(33) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(33)(34) "Minaable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(34)(35) "Mineral" means coal and uranium.

~~(35)~~(36) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(36)~~(37) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

~~(37)~~(38) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

~~(38)~~(39) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

~~(39)~~(40) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(40)~~(41) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(41)~~(42) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(42)~~(43) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(43)~~(44) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

~~(44)~~(45) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

~~(45)~~(46) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and

amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

(46)(47) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(47)(48) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(48)(49) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(49)(50) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

(50)(51) (a) "Strip mining" means any part of the process followed in the production of mineral by the open-cut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

(51)(52) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(52)(53) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

(53)(54) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(54)(55) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

(55)(56) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(56)~~(57) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(57)~~(58) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(58)~~(59) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

**Section 2.** Section 82-4-232, MCA, is amended to read:

**"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by board rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

(i) the location and acreage of the land for which bond release is sought;

(ii) the amount of bond release sought;

(iii) a description of the completed reclamation, including the date of performance;

(iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and

(v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.

(e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(g) If the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes but is not limited to:

(i) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(h) The department shall, within 30 days of determining that the application is administratively complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

(i) The department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit.

(j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes but is not limited to:

(A) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) a material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(k) ~~The~~ *At the request of the permittee, and for a designated area within the permit boundary within or across affected drainage basins, the department shall release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:*

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable *designated area within the permit area boundary*.

(ii) ~~After~~ *The department shall release a portion of the bond for the designated area that would be sufficient for a third party to cover the cost of replacing soil after revegetation has been and soil stability have been established on in the regraded lands designated area in accordance with the approved reclamation plan; the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. Any part of the bond may not be released under this subsection (6)(k)(ii):*

(A) ~~as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or~~

(B) ~~before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.~~

~~(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met. Whenever a silt dam is to be retained as a permanent impoundment, that portion of the bond may also be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner are made with the department.~~

*(iii) Except as provided in subsection (6)(k)(iv), in accordance with the requirements of 82-4-235, upon expiration of the period specified for responsibility, and after the designated area has been successfully revegetated, the remaining total of the bond required for a third party to establish vegetation must be released for the designated area.*

*(iv) The department shall retain a portion of the bond sufficient for a third party to fully satisfy remaining permit conditions if:*

*(A) the disturbed areas eligible for release are contributing suspended solids to streamflow or runoff outside of the affected drainage basin or permit boundary in excess of the requirements of 82-4-231(10)(k);*

*(B) soil productivity for prime farmlands eligible for release is not returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey; or*

*(C) the permittee has not successfully completed all reclamation activities, including water replacement, in the designated area.*

*(v) On request by the permittee, the department shall release all final bonds when, in accordance with the requirements of this chapter, the permittee successfully completes all prospecting, mining, and reclamation activities within the designated area.*

*(l) If the department disapproves the application for release of the bond or a portion of the bond, it shall:*

*(i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the bond or a portion of the bond has not been accomplished as required by this part; and*

*(ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public hearing.*

*(m) When an application for total or partial bond release is filed with the department, it shall notify the municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.*

*(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).*

*(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:*

*(i) There is a reasonable likelihood for achievement of the alternative land use.*

*(ii) The alternative land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.*

*(iii) The alternative land use will not:*

- (A) be impractical or unreasonable;
- (B) be inconsistent with applicable land use policies or plans;
- (C) involve unreasonable delay in implementation; or
- (D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term “landowner” includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan.”

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

Approved April 30, 2021

## CHAPTER NO. 338

[SB 337]

AN ACT REVISING LAWS RELATED TO RELOCATION OF GRIZZLY BEARS; REVISING RULEMAKING AUTHORITY; AMENDING SECTION 87-5-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 87-5-301, MCA, is amended to read:

“**87-5-301. Grizzly bear -- findings -- policy.** (1) The legislature finds that:

(a) grizzly bears are a recovered population and thrive under responsive cooperative management;

(b) grizzly bear conservation is best served under state management and the local, state, tribal, and federal partnerships that fostered recovery; and

(c) successful conflict management is key to maintaining public support for conservation of the grizzly bear.

(2) It is the policy of the state to:

(a) manage the grizzly bear as a species in need of management to avoid conflicts with humans and livestock; and

(b) *subject to the provisions of subsection (3)*, use proactive management to control grizzly bear distribution and prevent conflicts, including trapping and lethal measures.

(3) (a) *Except as provided in subsection (3)(b), the department may not relocate a grizzly bear listed under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., except to a release site previously approved by the commission for relocation of grizzly bears.*

(b) *The department may respond to a grizzly bear listed under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., that is causing conflict outside of a federal recovery zone. If the bear is to be relocated, the department may not relocate the bear.”*

**Section 2. Effective date.** [This act] is effective March 1, 2022.  
Approved April 30, 2021

## CHAPTER NO. 339

[SB 344]

AN ACT ALLOWING THE DEPARTMENT OF CORRECTIONS TO REPURPOSE CORRECTIONAL FACILITIES SERVING YOUTH AND ADULT OFFENDERS; REDEFINING TERMS RELATED TO STATE YOUTH CORRECTIONAL FACILITIES AND STATE PRISONS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO HOLD CERTAIN YOUTH AND ADULT OFFENDERS IN THE SAME FACILITY SUBJECT TO CERTAIN CONDITIONS; REVISING LAWS RELATED TO EXCESSIVE CAPACITY FOR CERTAIN CORRECTIONAL FACILITIES THAT HOUSE YOUTH AND THE DEPARTMENT'S DETERMINATION OF ALTERNATIVE PLACEMENTS; REQUIRING THE DEPARTMENT TO PRIORITIZE YOUTH NEEDS WHEN CONSIDERING THE USE OF A FACILITY PREVIOUSLY USED TO HOUSE YOUTH; AND AMENDING SECTIONS 19-20-101, 20-4-134, 20-4-502, 20-9-327, 41-5-103, 41-5-106, 41-5-122, 41-5-206, 41-5-208, 41-5-355, 41-5-1416, 41-5-1430, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-1523, 41-5-2002, 41-5-2005, 45-5-214, 45-7-307, 45-8-318, 46-5-112, 46-23-102, 46-23-201, 50-5-101, 50-5-301, 52-2-302, 52-5-101, 52-5-108, 52-5-109, 52-5-110, 52-5-111, 52-5-112, 52-5-113, 52-5-114, 52-5-120, 52-5-121, 52-5-126, 52-5-128, 53-1-104, 53-1-105, 53-1-107, 53-1-109, 53-1-201, 53-1-202, 53-1-203, 53-1-207, 53-30-101, 53-30-102, 53-30-141, AND 53-30-702, MCA.

*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” or “account balance” 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, minus any amount deducted for correction of errors and the aggregate amount of all retirement benefit payments and refunds of accumulated contributions paid to or on behalf of the member.

(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) “Alternate beneficiary” means an estate or an individual not designated as a beneficiary but that becomes a beneficiary pursuant to 19-20-1005.

(4) “Average final compensation” means a member’s highest average earned compensation, determined pursuant to 19-20-805, on which all required contributions have been made.

(5) “Beneficiary designation” means the process that the retirement system prescribes pursuant to this chapter by which a person authorized by law designates one or more beneficiaries.

(6) “Beneficiary designation record” means either the hard copy form or electronic record prescribed by the retirement system and used by a person authorized by law to designate one or more beneficiaries.

(7) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(8) "Contingent beneficiary" means a designated beneficiary with the right to receive any benefit or refund of accumulated contributions payable if there is no eligible primary beneficiary.

(9) "Creditable service" is that service defined by 19-20-401.

(10) "Date of termination" or "termination date" means the last date on which a member performed service in a position reportable to the retirement system.

(11) "Designated beneficiary" means one or more primary beneficiaries or contingent beneficiaries designated pursuant to 19-20-1006.

(12) (a) "Earned compensation" means, except as limited by subsections (12)(b) and (12)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:

(i) direct employer premium payments on behalf of members for 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 form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits;

(iv) any noncash benefit provided by an employer to or on behalf of a member;

(v) termination pay unless included pursuant to 19-20-716;

(vi) 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);

(vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;

(viii) incentive or bonus payments paid to a member that are not part of a series of annual payments;

(ix) a professional stipend paid pursuant to 20-4-134; or

(x) any similar payment or reimbursement made to or on behalf of a member by an employer.

(c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(13) "Employer" means:

(a) the state of Montana;

(b) 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, political subdivision, or instrumentality of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

(14) "Extra duty service" means service in an educational services capacity that is not compensated as part of the normally assigned duties and functions of a school district teacher, administrator, or other employee but is regularly assigned to one or more school district teachers, administrators, or other employees as part of the regular operation of the school district's curricular and extracurricular programs.

(15) "Full-time service" means service that is:

(a) at least 180 days in a fiscal year;  
(b) at least 140 hours a month during at least 9 months in a fiscal year; or  
(c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.

(16) "Individual" means a human being.

(17) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(18) "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702(2), (4), or (5) has designated to receive a retirement allowance upon the death of the retired member.

(19) "Member" means a person who has an individual account in the annuity savings account. Unless otherwise specified, "member" refers to a tier one member or a tier two member.

(20) "Normal form" or "normal form benefit" means a monthly retirement benefit payable only for the lifetime of the retired member.

(21) "Normal retirement age" means an age no earlier than 60 years of age.

(22) "Part-time service" means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(23) "Position reportable to the retirement system" means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(24) "Primary beneficiary" means a designated beneficiary with a first right to receive any benefit or refund of accumulated contributions payable upon the death of the individual authorized by law to make the designation.

(25) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(26) "Retired", "retired member", or "retiree" means a person who is considered in retired member status under the provisions of 19-20-810.

(27) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

(28) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(29) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(30) "Service" means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(31) “Termination” or “terminate” means that the employment relationship between the member and the member’s employer has been terminated as required in 19-20-810.

(32) (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.

(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).

(33) “Tier one member” means a person who became a member before July 1, 2013, and who has not withdrawn the member’s account balance.

(34) “Tier two member” means a person who became a member on or after July 1, 2013, or who, after withdrawing the member’s account balance, became a member again after July 1, 2013.

(35) “Vested” means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

(36) “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 20-4-134, MCA, is amended to read:

**“20-4-134. Professional stipends for teachers certified by national board for professional teaching standards.** (1) Pursuant to subsection (5), an annual stipend of up to \$1,500 must be provided to each teacher who holds a current certificate from the national board for professional teaching standards if the teacher is:

(a) a full-time classroom teacher, librarian, or other full-time employee serving in an assignment covered by national board certification assessment;

(b) certified to teach in Montana under the provisions of 20-4-103; and

(c) a full-time employee of:

(i) a Montana public school district, as defined in 20-6-101;

(ii) an education cooperative, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; or

(iv) a ~~state youth~~ correctional facility, as defined in 41-5-103.

(2) An annual stipend of up to \$2,500 must be provided to each teacher who meets the criteria for the stipend in subsection (1) and who has an instructional assignment in a school identified as:

(a) a school in a high-poverty area eligible to participate in the community eligibility provision under Public Law 111-296; or

(b) an impacted school as defined in 20-4-502.

(3) A teacher becomes eligible for the stipend in subsection (1) in the school year beginning July 1 after the teacher obtains certification or recertification from the national board for professional teaching standards.

(4) By March 1, the superintendent of public instruction shall distribute stipend payments to any entity listed in subsections (1)(c)(i) through (1)(c)(iv) that employs an eligible teacher.

(5) The obligation for funding a portion of the professional stipends is an obligation of the state. This section may not be construed to require a school district to provide its matching portion of a stipend to a qualifying teacher

without a payment from the state to the district. If the money appropriated for the stipends is not enough to provide the full amount for each eligible teacher, the superintendent of public instruction shall request the state budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of the stipends.

(6) (a) For a stipend under subsection (1), the state shall pay \$500 and another \$1 for each \$1 contributed by the teacher's school district, up to a maximum state contribution of \$1,000.

(b) For a stipend under subsection (2), the state shall pay \$1,000 and another \$2 for each \$1 contributed by the teacher's school district, up to a maximum state contribution of \$2,000."

**Section 3.** 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) "Critical quality educator shortage area" means a specific licensure or endorsement area in an impacted school in which:

(a) in any of the 3 immediate preceding school fiscal years a position was:

(i) filled through the procedures set forth in 19-20-732, 20-4-106(1)(e), or 20-4-111;

(ii) filled from a candidate pool of less than five qualified candidates; or

(iii) advertised and remained vacant and unfilled due to a lack of qualified candidates for a period in excess of 30 days; or

(b) a vacancy for the current school year was advertised for a period of at least 30 days and the district received less than five applications from qualified candidates.

(2) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

(3) "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.

(4) "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.

(5) "Impacted school" means:

(a) a special education cooperative;

(b) the Montana school for the deaf and blind, as described in 20-8-101;

(c) the Montana youth challenge program, as established in 10-1-1401;

(d) a state youth correctional facility, as defined in 41-5-103;

(e) a public school located on an Indian reservation; and

(f) a public school that, driving at a reasonable speed for the road surface, is located more than 20 minutes from a Montana city with a population greater than 15,000 based on the most recent federal decennial census.

(6) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the 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 (6)(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 (6)(b) of this section to provide services to students.

(b) For purposes of subsection (6)(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.
- (7) "School district" means a public school district, as provided in 20-6-101 and 20-6-701."

**Section 4.** Section 20-9-327, MCA, is amended to read:

**"20-9-327. Quality educator payment.** (1) (a) The state shall provide a quality educator payment to:

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101;
- (iv) ~~state youth~~ correctional facilities, as defined in 41-5-103; and
- (v) the Montana youth challenge program.

(b) A special education cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills ~~youth~~ correctional facility and the facility under contract with the department of corrections for female youth must be distributed to those facilities by the department of corrections.

(d) The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) The quality educator payment is calculated as provided in 20-9-306, using the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) of this section in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education;

(b) (i) 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

(ii) is employed by an entity listed in subsection (1) to provide services to students; or

(c) (i) holds an American Indian language and culture specialist license; and

(ii) is employed by an entity listed in subsection (1) to provide services to students in an Indian language immersion program pursuant to Title 20, chapter 7, part 14. (Subsection (3)(c) terminates June 30, 2023--sec. 1, Ch. 171, L. 2019.)"

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

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

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

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

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

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

(5) "Conditional release" means the release of a youth from a ~~state youth~~ correctional facility subject to the terms and conditions of the conditional release agreement provided for in 52-5-126.

(6) (a) "Correctional facility" means a public *secure residential facility* or a private, ~~physically~~ secure residential facility under contract with the department and operated ~~solely for the purpose of housing adjudicated delinquent youth to provide for the custody, treatment, training, and rehabilitation of:~~

(i) *formally adjudicated delinquent youth;*

(ii) *convicted adult offenders or criminally convicted youth; or*

(iii) *a combination of the populations described in subsections (6)(a)(i) and*

(6)(a)(ii) *under conditions set by the department in rule.*

(b) *The term does not include a state prison as defined in 53-30-101.*

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

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

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

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

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

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

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

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

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation; or

(c) who has violated the terms and conditions of the youth's conditional release agreement.

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

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

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

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

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

(b) contempt of court or violation of a valid court order; or  
(c) violation of the terms and conditions of the youth's conditional release agreement.

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

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

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

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

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

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

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

(22) "Guardian" means an adult:

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

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

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

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

(b) The term does not include a jail.

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

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

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

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

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

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

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

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

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(31) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(32) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(33) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

- (i) a person whose parental rights have been judicially terminated; or
- (ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(34) "Probable cause hearing" means the hearing provided for in 41-5-332.

(35) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(36) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(37) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(38) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional release agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(39) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(40) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

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

(42) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable

cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(43) “State youth correctional facility” means the Pine Hills youth correctional facility in Miles City or the correctional facility under contract with the department for female youth.~~

~~(44)~~(43) “Substitute care” means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

~~(45)~~(44) “Victim” means:

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

(b) an adult relative of the victim, as defined in subsection ~~(45)(a)~~ (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(46)~~(45) “Youth” means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(47)~~(46) “Youth assessment” means a multidisciplinary assessment of a youth as provided in 41-5-1203.

~~(48)~~(47) “Youth assessment center” means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth’s family in addressing the youth’s behavior.

~~(49)~~(48) “Youth care facility” has the meaning provided in 52-2-602.

~~(50)~~(49) “Youth court” means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth alleged to have violated the terms and conditions of the youth’s conditional release agreement and includes the youth court judge, juvenile probation officers, and assessment officers.

~~(51)~~(50) “Youth detention facility” means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

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

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

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of the terms and conditions of the youth’s conditional release agreement, or violation of a valid court order.

~~(52)~~(51) “Youth in need of intervention” means a youth who is adjudicated as a youth and who:

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

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

(ii) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of the terms and conditions of the youth’s conditional release agreement, or violation of a valid court order.

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

**Section 6.** Section 41-5-106, MCA, is amended to read:

**“41-5-106. Order of adjudication – noncriminal.** ~~No~~ A placement of any youth in any ~~state youth~~ correctional facility under this chapter ~~shall may~~ *not* be deemed commitment to a penal institution. ~~No~~ An adjudication ~~upon~~ on the status of any youth in the jurisdiction of the court ~~shall may not~~ operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense; ~~nor shall such~~ An adjudication *may not* be deemed a criminal conviction, ~~nor shall any~~ *and a youth may not* be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter ~~shall be~~ *is* admissible in evidence except as otherwise provided in this chapter.”

**Section 7.** Section 41-5-122, MCA, is amended to read:

**“41-5-122. Duties of youth placement committee.** A youth placement committee shall:

- (1) review all information relevant to the placement of a youth;
- (2) consider available resources appropriate to meet the needs of the youth;
- (3) consider the treatment recommendations of any professional person who has evaluated the youth;
- (4) consider options for the financial support of the youth;
- (5) recommend in writing to the youth court judge or the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at a ~~state youth~~ correctional facility, or with a parent, other family member, or guardian.
- (6) review temporary and emergency placements as required under 41-5-124; and
- (7) conduct placement reviews at least every 6 months and at other times as requested by the youth court.”

**Section 8.** Section 41-5-206, MCA, is amended to read:

**“41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney’s discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

- (i) sexual intercourse without consent as defined in 45-5-503;
- (ii) deliberate homicide as defined in 45-5-102;
- (iii) mitigated deliberate homicide as defined in 45-5-103;
- (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or
- (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) negligent homicide as defined in 45-5-104;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) sexual assault as provided in 45-5-502(3);
- (v) assault with a weapon as defined in 45-5-213;

- (vi) robbery as defined in 45-5-401;
- (vii) burglary or aggravated burglary as defined in 45-6-204;
- (viii) aggravated kidnapping as defined in 45-5-303;
- (ix) possession of explosives as defined in 45-8-335;
- (x) criminal distribution of dangerous drugs as defined in 45-9-101;
- (xi) criminal possession of dangerous drugs as defined in 45-9-102(3);
- (xii) criminal possession with intent to distribute as defined in 45-9-103(1);
- (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;
- (xv) escape as defined in 45-7-306;
- (xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which the youth is found guilty. A youth who is sentenced to the department or a state prison

must be evaluated and placed by the department in an appropriate ~~juvenile or adult~~ correctional facility. The department shall confine the youth in an institution that it considers proper, including a ~~state youth~~ correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

**Section 9.** Section 41-5-208, MCA, is amended to read:

**"41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition – nonextended jurisdiction and nontransferred cases.** (1) After adjudication by the court of a case that was not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 16 of this chapter, the court may, on the youth's motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the court's disposition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

- (a) written notice of the motion to transfer;
- (b) an opportunity to be heard in person and to present witnesses and evidence;
- (c) a written statement by the court of the evidence relied on and reasons for the transfer;
- (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and
- (e) the right to counsel.

(3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

(4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-1512 or 41-5-1513, the district court may, after hearing, impose conditions as provided under 46-18-201 through 46-18-203 but may not place a youth in a state adult correctional facility unless the youth was adjudicated for a felony offense.

(5) If, at the time of transfer, the youth is incarcerated in a ~~state youth~~ correctional facility, the district court may order that the youth, after reaching 18 years of age:

- (a) be incarcerated in a state adult correctional facility if the youth was adjudicated for a felony offense, boot camp, or prerelease center; or

(b) be supervised by the department.

(6) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."

**Section 10.** Section 41-5-355, MCA, is amended to read:

**~~41-5-355. Excessive juvenile population – confinement~~**  
***Confinement of juveniles in alternate placements.*** (1) The department shall determine the capacity for state youth of correctional facilities. The department shall notify all district courts, sheriffs, and youth courts of the capacity for each state youth correctional facility by sending a report to each annually.

(2) ~~If the population of a state youth correctional facility exceeds the capacity established by the department, the director of the department may declare that the capacity has been exceeded and temporarily stop admissions to the facility. The director shall notify each district court, sheriff, and youth court that delinquent or criminally convicted youth will not be accepted by the department for admission into the facility until the population is reduced to less than the capacity determined by the department in subsection (1).~~

(3)(2) ~~If the director of the~~ *The* department declares that the capacity has been exceeded, ~~the department shall~~ *may* place delinquent youth committed to a state youth correctional facility or criminally convicted youth in alternate placements based on the needs of the delinquent youth or criminally convicted youth. ~~If a youth is denied placement in a state youth correctional facility under this section, the department shall inform and seek approval of the district court of the intended alternative placement prior to placing the youth.~~

(4)(3) The department may enter into contracts with the federal government, other states, local governments, public or private corporations, and other entities that have suitable facilities for confining delinquent youth or criminally convicted youth committed to the department, ~~either because a state youth correctional facility has exceeded its capacity or because the department has no youth correctional facility that is adequate for certain delinquent youth or criminally convicted youth.~~

**Section 11.** Section 41-5-1416, MCA, is amended to read:

**~~41-5-1416. Victims and witnesses of juvenile felony offenses – consultation – notification of proceedings.~~** (1) The attorney general shall ensure that the services and assistance that must be provided under Title 46, chapter 24, to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under this part, the county attorney or a designee shall consult with the victim of a juvenile felony offense regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-1402;

(b) a reduction of the charge to misdemeanor;

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing or pending a probable cause hearing. The consultation required by this subsection (2)(c) must take place prior to the youth's release, whether or not the county attorney or designee has received information from the victim under subsection (3)(a), unless the county attorney or designee is unable to contact the victim after making a good faith effort to contact the victim.

(d) the disposition of the youth.

(3) (a) Whenever possible, a person described in subsection (3)(b) who provides the appropriate agency with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-1402;  
 (ii) the release of the youth from detention or shelter care; and  
 (iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-1501, the setting of a date for the adjudicatory hearing under 41-5-1502, the setting of a date for the dispositional hearing under 41-5-1511, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim, as defined in 41-5-103, of a juvenile felony offense.

(c) The county attorney or a designee who provides the consultation regarding the disposition of a case required in subsection (2) shall give the victim the opportunity to provide the victim's current telephone number and address and shall provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional, or shelter care facilities that are responsible for the custody of the youth.

(d) The appropriate official or agency shall provide the notification required by this subsection (3) in the same manner as required for offenses committed by adults.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

**Section 12.** Section 41-5-1430, MCA, is amended to read:

**"41-5-1430. Conditional release revocation hearing.** (1) (a) If a county attorney files a petition to revoke a youth's conditional release, the court shall hold a revocation hearing without a jury within 10 working days after the petition is filed, except as provided in subsection (1)(b).

(b) (i) If a youth alleged to have violated the terms and conditions of the youth's conditional release agreement has been taken into custody and placed in detention, the court shall conduct a probable cause hearing in accordance with 41-5-332 through 41-5-334.

(ii) If the court determines that there is probable cause to believe that the youth has violated the terms and conditions of the youth's conditional release agreement and the county attorney determines that revocation is warranted, the county attorney shall file a petition to revoke within 7 working days. The court shall hold a revocation hearing without a jury within 10 working days after the petition has been filed.

(iii) If the county attorney does not file a petition to revoke, the youth must be released unless good cause is shown to further detain the youth.

(2) In regard to the conditional release revocation hearing, the youth is entitled to:

(a) receive written notice of the alleged violation of the terms and conditions of the youth's conditional release;

(b) receive evidence of the alleged violation;

(c) an opportunity to be heard in person or by interactive video transmission and to present witnesses and evidence;

(d) cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and

(e) be represented by counsel.

(3) After the revocation hearing, if the court finds by a preponderance of the evidence presented that the youth has violated the terms and conditions of the youth's conditional release, the court may revoke the youth's conditional release and return the youth to a ~~state youth~~ correctional facility or make any other judgment or disposition that could have been made under the original judgment."

**Section 13.** Section 41-5-1503, MCA, is amended to read:

**“41-5-1503. Medical or psychological evaluation of youth – urinalysis.** (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth’s constitutional rights in the manner provided for in 41-5-331. Except as provided in subsection (2), the youth court shall pay for the cost of the evaluation from its judicial district’s allocation provided for in 41-5-130 or 41-5-2012.

(2) The youth court shall determine the financial ability of the youth’s parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth’s parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-1512(1)(o)(i), the youth court may not order an evaluation or placement of a youth at a ~~state youth~~ correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed in 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital.

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs.”

**Section 14.** Section 41-5-1504, MCA, is amended to read:

**“41-5-1504. Finding of suffering from mental disorder and meeting other criteria – rights – limitation on placement.** (1) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a ~~state youth~~ correctional facility.

(3) (a) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1), after placement in or sentencing to a ~~state youth~~ correctional facility must be moved to a more appropriate placement in response to the youth’s mental health needs and consistent with the disposition alternatives available in 53-21-127.

(b) (i) If before removing the youth from the facility the department determines that it will request funds for the youth’s placement from the cost containment pool as provided for in 41-5-132, the department may ask the cost containment review panel to make recommendations to the department about the most appropriate placement for the youth. The department shall provide the cost containment review panel with sufficient information about the youth to allow the panel to make its recommendations, and the department shall consider the panel’s recommendations before making its placement decision.

(ii) The department may request at any time from the cost containment review panel recommendations regarding the youth’s placement.

(iii) The cost containment review panel shall establish protocols for making recommendations to the department under this section.”

**Section 15.** Section 41-5-1512, MCA, is amended to read:

**“41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments.** (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee if a committee has been established as provided for in 41-5-121.

(c) commit the youth to the youth court for the purposes of placement in a private, out-of-home facility subject to the conditions in 41-5-1522. In an order committing a youth to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person who contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based on the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The juvenile probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The juvenile probation officer may, in the juvenile probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth and may not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for adjudication, disposition, and attorney fees for the costs of prosecuting or defending the youth and costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis. Except as provided in subsection (1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days; or

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator."

**Section 16.** Section 41-5-1513, MCA, is amended to read:

**"41-5-1513. Disposition – delinquent youth – restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a ~~state youth~~ correctional facility or other appropriate program as determined by the department and recommend to the department that the youth not be released until the youth reaches 18 years of age. ~~The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b).~~ The court may not place a youth adjudicated to be a delinquent youth in a ~~state youth~~ correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a ~~state youth~~ correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a ~~state youth~~ correctional facility.

(c) subject to the provisions of subsection (6), require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, the youth is exempt from the duty to register

as a sexual offender pursuant to Title 46, chapter 23, part 5, unless the court finds that:

(i) the youth has previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; or

(ii) registration is necessary for protection of the public and that registration is in the public's best interest;

(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a ~~state youth~~ correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a ~~youth~~ correctional facility. Once a youth is committed to the department for placement in a ~~state youth~~ correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sexual offense, as defined in 46-23-502, the youth court shall:

(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(b) designate the youth's risk level pursuant to 46-23-509;

(c) require completion of sexual offender treatment; and

(d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose on the youth those restrictions required for adult offenders by 46-18-255(2) unless the youth is approved by the youth court or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to 41-5-205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the supervision of the offender is transferred to the department.

(3) For a youth designated under this section and 46-23-509 as a level 3 offender, the youth court if the youth is under the youth court's jurisdiction or the department if the youth is under the department's jurisdiction shall notify in writing the superintendent of the school district in which the youth is enrolled of the adjudication, any terms of probation or conditional release, and the facts of the offense for which the youth was adjudicated, except the name of the victim, and provide a copy of the court's disposition order to the superintendent.

(4) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth, except as provided in 52-5-109.

(5) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator.

(6) The duration of registration for a youth who is required to register as a sexual or violent offender must be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration."

**Section 17.** Section 41-5-1522, MCA, is amended to read:

**“41-5-1522. Commitment to department – restrictions on placement.** When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth while the youth is in a correctional facility or other program operated by or under contract with the department after considering the recommendations made by the youth placement committee if a committee has been established as provided for in 41-5-121. Placement is subject to the following limitations:

(1) A youth may not be held in a ~~state youth~~ correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.

(2) A youth may not be placed in or transferred to a ~~state adult~~ correctional facility ~~or other facility used for the execution of sentences of adults convicted of crimes that does not provide sight and sound separation from adult offenders as required in 28 CFR 115.14.~~

(3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent adjustment in a ~~state youth~~ correctional facility.”

**Section 18.** Section 41-5-1523, MCA, is amended to read:

**“41-5-1523. Commitment to department or youth court – supervision.** (1) A youth placed in a ~~state youth~~ correctional facility or other facility or program operated by or under contract with the department is under the control of the department until the youth is discharged, transferred, or placed on conditional release by the department. Before a youth is placed on conditional release, a conditional release agreement must be developed and signed as provided in 52-5-126.

(2) A youth who is placed on conditional release must be supervised by a juvenile probation officer of the youth court.

(3) A youth placed in any private, out-of-home facility by the youth court must be supervised by a juvenile probation officer of the youth court.

(4) Responsibilities of the juvenile probation officer relating to placement of the youth include but are not limited to:

(a) if a youth placement committee has been established as provided for in 41-5-121, submitting information and documentation necessary for the committee that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth’s school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) managing the youth’s case while in a private, out-of-home facility and upon release until supervision is terminated by the youth court.”

**Section 19.** Section 41-5-2002, MCA, is amended to read:

**“41-5-2002. Purpose.** The purposes of this part are to:

(1) provide an alternate method of funding juvenile out-of-home placements, programs, and services;

(2) increase the ability of youth courts to respond to juvenile delinquency through early intervention and expanded community alternatives;

(3) enhance the ability of youth courts to control costs;

(4) enhance community safety, hold youth accountable, and promote the competency development of youth;

(5) use local resources for the placement of troubled youth, when appropriate and available;

(6) reduce placements in out-of-state residential facilities and programs; and

(7) use ~~state youth~~ correctional facilities when appropriate.”

**Section 20.** Section 41-5-2005, MCA, is amended to read:

**“41-5-2005. Youth placement committee recommendation to youth court judge – acceptance or rejection.** (1) (a) Prior to commitment of a youth to the legal custody of the youth court under 41-5-1512 or 41-5-1513, a youth placement committee may be established as provided for in 41-5-121. Except as provided in subsection (1)(b), the committee, if established, shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

(b) An alternative recommendation is unnecessary if the committee’s recommendation is placement in a ~~youth~~ correctional facility.

(2) The committee shall first consider placement of the youth in a community-based facility or program and shall give priority to placement of the youth in a facility or program located in the state of Montana.

(3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services are not appropriate.

(4) The primary and alternative recommendations of the youth placement committee must be for similar facilities or programs. The youth court may require a youth placement committee to reevaluate a youth if the recommended placements are dissimilar.

(5) If the youth court rejects both of the committee’s recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(6) The youth court may not order a placement or change of placement that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the annual allocation provided by the office of court administrator under 41-5-130.”

**Section 21.** Section 45-5-214, MCA, is amended to read:

**“45-5-214. Assault with bodily fluid.** (1) A person commits the offense of assault with a bodily fluid if the person purposely causes one of the person’s bodily fluids to make physical contact with:

(a) a law enforcement officer, a staff person of a correctional or detention facility, or a health care provider, as defined in 50-4-504, including a health care provider performing emergency services, while the health care provider is acting in the course and scope of the health care provider’s profession and occupation:

(i) during or after an arrest for a criminal offense;

(ii) while the person is incarcerated in or being transported to or from a state prison, a county, city, or regional jail or detention facility, or a health care facility; or

(iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, ~~state youth~~ correctional facility *as defined in 41-5-103*, health care facility, or shelter care facility; or

(b) an emergency responder.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

(3) The youth court has jurisdiction of any violation of this section by a minor.

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

(a) "Bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

(b) "Emergency responder" means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency care provider, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident."

**Section 22.** Section 45-7-307, MCA, is amended to read:

**"45-7-307. Transferring illegal articles – unauthorized communication.** (1) (a) A person commits the offense of transferring illegal articles if the person knowingly or purposely transfers any illegal article or weapon to a person subject to official detention or is transferred any illegal article or weapon by a person subject to official detention.

(b) A person convicted of transferring illegal articles or a weapon shall be:

(i) imprisoned in a state prison for a term not to exceed 20 years, if the item transferred is a weapon;

(ii) imprisoned in a state prison for a term not to exceed 10 years, if the illegal article is a dangerous drug, as defined in 50-32-101; or

(iii) imprisoned in a state prison for a term not to exceed 13 months or be fined an amount not more than \$1,500, or both, if the illegal article, other than a weapon or dangerous drug, is transferred to or from a person incarcerated in a state prison, as defined in 53-30-101(3)(c), or be fined an amount not more than \$100 or be imprisoned in the county jail for any term not to exceed 10 days, or both, if the illegal article, other than a weapon or dangerous drug, is transferred to or from a person incarcerated in a place other than a state prison.

(c) Subsection (1)(b)(iii) does not apply unless the offender knew or was given sufficient notice so that the offender reasonably should have known that the article conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if the person knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of the official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined an amount not to exceed \$100 or imprisoned in the county jail for any term not to exceed 10 days, or both."

**Section 23.** Section 45-8-318, MCA, is amended to read:

**"45-8-318. Possession of deadly weapon by prisoner or youth in facility.** (1) A person commits the offense of possession of a deadly weapon by a prisoner if the person purposely or knowingly possesses or carries or has under the person's custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon while the person is:

(a) a person committed to a state prison or incarcerated in a county jail, city jail, or regional jail and is:

(i) at a state prison, a state prison farm or ranch, or jail;  
 (ii) being conveyed to or from a place listed in this subsection (1)(a); or  
 (iii) under the custody of prison or jail officials, officers, or employees; or  
 (b) a person in a youth detention facility, secure detention facility, regional detention facility, short-term detention center, ~~state youth~~ correctional facility, or shelter care facility, as those terms are defined in 41-5-103, and is at the facility, being conveyed to or from the facility, or under the custody of the facility officials, officers, or employees.

(2) A person convicted of the offense of possession of a deadly weapon by a prisoner shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, by a fine of not more than \$50,000, or by both fine and imprisonment.

(3) The youth court has jurisdiction of any violation of subsection (1)(b) unless the charge is filed in district court, in which case the district court has jurisdiction.”

**Section 24.** Section 46-5-112, MCA, is amended to read:

**“46-5-112. Electronic data privacy – warrant required – exceptions.**

(1) Except as provided in subsection (2), a government entity may not obtain the stored data of an electronic device without a search warrant issued by a court upon a finding of probable cause.

(2) A government entity may obtain the stored data of an electronic device without a search warrant:

(a) with the consent of the owner or authorized user of the electronic device;

(b) in accordance with judicially recognized exceptions to warrant requirements;

(c) if the owner has voluntarily and publicly disclosed the stored data;

(d) if the government entity, in good faith, believes that an emergency involving danger, death, or serious physical injury to a person requires immediate disclosure of communications relating to the emergency;

(e) in order to respond to the user’s call for emergency services; or

(f) for any electronic devices found within the confines of ~~an adult or youth~~ a correctional facility.

(3) Nothing in 46-5-111 through 46-5-113 may be construed to limit a government entity’s ability to use, maintain, or store information on its own electronic devices or to disseminate information stored on its own electronic devices.

(4) Sections 46-5-111 through 46-5-113 do not apply to motor carrier safety or hazardous materials programs implemented by the department of transportation for purposes of complying with federal motor carrier safety regulations.”

**Section 25.** Section 46-23-102, MCA, is amended to read:

**“46-23-102. Cases of juveniles excluded.** The provisions of parts 1, 2, 3, and 10 of this chapter do not apply to probation in the youth courts or to conditional release from ~~state youth~~ correctional facilities.”

**Section 26.** Section 46-23-201, MCA, is amended to read:

**“46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (4) and the parole criteria in 46-23-208, the board may release on nonmedical parole by appropriate order any person who is:

(a) confined in a state prison;

(b) sentenced to the state prison and confined in a prerelease center;

(c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a ~~youth~~ correctional facility *as defined in 41-5-103*;

(d) sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years if the prisoner is confined for a sexual or violent offense, as defined in 46-23-502, or up to 1 year if the prisoner is confined for any other offense before a hearing panel conducts another hearing or review."

**Section 27.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation status to the outpatient centers for surgical services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an

agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

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

(20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and requirements.

(21) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

(22) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(23) "Federal acts" means federal statutes for the construction of health care facilities.

(24) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(25) "Healthcare facilities accreditation program" means the program nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(27) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(28) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(29) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(30) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(31) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided

by law, services provided must include medical personnel available to provide emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(c) The emergency care requirement for a hospital that specializes in providing health services for psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed registered nurses.

(32) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmiry--A" provides outpatient and inpatient care;

(b) an "infirmiry--B" provides outpatient care only.

(33) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(34) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(35) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(36) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(37) (a) "Long-term care facility" means a facility (a) or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or ~~juvenile and adult~~ correctional facilities operating under the authority of the department of corrections.

(38) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because

of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(39) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(40) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(41) "Offer" means the representation by a health care facility that it can provide specific health services.

(42) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(43) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(44) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(45) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(46) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(47) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(48) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(49) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(50) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(51) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(52) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(53) “Residential psychiatric care” means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual’s condition. Residential psychiatric care must be individualized and designed to achieve the patient’s discharge to less restrictive levels of care at the earliest possible time.

(54) “Residential treatment facility” means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(55) “Retirement home” means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(56) “Skilled nursing care” means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(57) (a) “Specialty hospital” means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

- (i) patients with a cardiac condition;
- (ii) patients with an orthopedic condition;
- (iii) patients undergoing a surgical procedure; or
- (iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (57), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term “specialty hospital” does not include:

- (i) psychiatric hospitals;
- (ii) rehabilitation hospitals;
- (iii) children’s hospitals;
- (iv) long-term care hospitals; or
- (v) critical access hospitals.

(58) “State health care facilities plan” means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(59) “Swing bed” means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

(60) “The joint commission” means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.”

**Section 28.** Section 50-5-301, MCA, is amended to read:

**“50-5-301. When certificate of need is required – definitions.**

(1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds \$1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement,

expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds \$1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of \$150,000 or more;

(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(f) the expansion of the geographical service area of a home health agency;

(g) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101;

(h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical dependency treatment; or

(i) the construction, development, or other establishment of a facility for ambulatory surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.

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

(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility, or an inpatient chemical dependency facility. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h);

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including licensed addiction counselors; or

(iii) a rehabilitation facility or an outpatient center for surgical services.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or

similar accommodations providing for transients, students, or individuals not requiring institutional health care; or ~~juvenile and adult~~ correctional facilities operating under the authority of the department of corrections.

(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility.”

**Section 29.** Section 52-2-302, MCA, is amended to read:

**“52-2-302. Definitions.** The following definitions apply to this part:

(1) (a) “High-risk child with multiagency service needs” means a child under 18 years of age who is seriously emotionally disturbed, who is placed or who imminently may be placed in an out-of-home setting, and who has a need for collaboration from more than one state agency in order to address the child’s needs.

(b) The term does not include a child incarcerated in a ~~state youth~~ correctional facility *as defined in 41-5-103*.

(2) “Least restrictive and most appropriate setting” means a setting in which a high-risk child with multiagency service needs is served:

(a) within the child’s family or community; or

(b) outside the child’s family or community where the needed services are not available within the child’s family or community and where the setting is determined to be the most appropriate alternative setting based on:

(i) the safety of the child and others;

(ii) ethnic and cultural norms;

(iii) preservation of the family;

(iv) services needed by the child and the family;

(v) the geographic proximity to the child’s family and community if proximity is important to the child’s treatment.

(3) “Provider” means an agency of state or local government, a person, or a program authorized to provide treatment or services to a high-risk child with multiagency service needs who is suffering from mental, behavioral, or emotional disorders.

(4) “Services” has the meaning as defined in 52-2-202.

(5) “System of care” means an integrated service support system that:

(a) emphasizes the strengths of the child and the child’s family;

(b) is comprehensive and individualized; and

(c) provides for:

(i) culturally competent and developmentally appropriate services in the least restrictive and most appropriate setting;

(ii) full involvement of families and providers as partners;

(iii) interagency collaboration; and

(iv) unified care and treatment planning at the individual child level.

(6) “Wraparound philosophy of care” means a planning process that is designed to address the needs of a child and the child’s family and that:

(a) empowers the family to take the lead in making decisions affecting the planning for support systems and services;

(b) reflects the family’s values, preferences, culture, strengths, and needs;

(c) emphasizes community-based natural and informal support systems;

(d) involves collaboration among members of a team that is developed with involvement of the family and that includes agencies, providers, and others who offer support to the child and family;

(e) provides services in the least restrictive and most accessible setting possible; and

(f) contains measurable outcomes that are regularly reviewed by the team and adjusted as necessary.”

**Section 30.** Section 52-5-101, MCA, is amended to read:

**“52-5-101. Establishment of state youth correctional facilities – prohibitions – definition.** (1) The department of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate *correctional* facilities to ~~properly~~ provide custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development for of youth in need of these services *who are*. ~~The youth must be at least 10 years of age or older and under less than 18 years of age. The facilities include but are not limited to the Pine Hills youth correctional facility in Miles City.~~

(2) A youth alleged or found to be a youth in need of intervention may not be placed in a ~~state youth~~ correctional facility ~~as defined in 41-5-103.~~

(3) *When a correctional facility previously used as a secure residential facility for youth is repurposed by the department to provide for the custody, treatment, training, and rehabilitation of other correctional populations, serving the needs of youth populations must have priority if youth population increases sufficiently to justify the department reverting to the previous use of the facility.”*

**Section 31.** Section 52-5-108, MCA, is amended to read:

**“52-5-108. Medical examination before admission – records required to accompany youth committed.** (1) Before a youth is admitted for any purpose or for any length of time to the Pine Hills ~~youth~~ correctional facility or another facility under an order of commitment to the department of corrections, the youth must be examined by a licensed physician assistant, by an advanced practice registered nurse, or by a licensed physician. A youth committed to the Pine Hills ~~youth~~ correctional facility or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the youth.”

**Section 32.** Section 52-5-109, MCA, is amended to read:

**“52-5-109. Transportation costs – arrangement for transportation.** (1) Prior to adjudication:

(a) for a youth placed in a facility, other than a ~~state youth~~ correctional facility or a detention facility, the judicial district of the youth court to which the youth has been referred shall pay the cost for transporting the youth to the facility and for any other transportation costs incurred while the youth is in the facility. The district shall pay these costs from its annual allocation provided for in 41-5-130.

(b) for a youth detained in a detention facility, the county of the youth court to which the youth has been referred shall pay the cost for transporting the youth to the facility and for any other transportation costs while the youth is in the facility.

(2) After adjudication:

(a) for a youth placed in a nonsecure facility within or outside the state, the judicial district of the youth court in which the youth was adjudicated shall pay the costs for transporting the youth to and from the facility from its annual allocation established under 41-5-130;

(b) for a youth committed to the department of corrections for placement in an in-state ~~youth~~ correctional facility or returned to the department for violation of the terms and conditions of the youth’s conditional release agreement, the county of the youth court in which the youth was adjudicated

shall pay the cost for transporting the youth to the facility. The department shall pay the cost for transporting the youth after the youth is released from the facility or provide other arrangements for transporting the youth.

(c) for a youth placed in an out-of-state correctional facility pursuant to 41-5-355, the department of corrections shall pay the cost for transporting the youth to the facility and the cost for transporting the youth after the youth is released from the facility.

(3) The youth court probation office shall arrange for all transportation to and from an out-of-home placement except when the department of corrections is responsible for transportation costs as provided for in subsections (2)(b) and (2)(c)."

**Section 33.** Section 52-5-110, MCA, is amended to read:

**"52-5-110. Transfer of child to other facility or institution.** The department of corrections, upon recommendation of the superintendent of a facility, may transfer a child resident in one of its youth correctional facilities to any other facility or institution under the jurisdiction and control of the department or under contract to the department."

**Section 34.** Section 52-5-111, MCA, is amended to read:

**"52-5-111. Commutation of sentence to state prison facility and transfer of prisoner to youth correctional facility.** (1) Upon the application of a person who has not attained 18 years of age who has been sentenced to a state prison facility or upon the application of the youth's parents or guardian, the governor may, after consulting with the department of corrections and with the approval of the board of pardons and parole, commute the sentence by committing the person ~~who to the department of corrections for placement in a correctional facility if the person~~ may benefit from programs offered at a youth correctional facility. ~~to the department of corrections~~ *Except as provided in subsection (2), the commutation continues in effect until the youth is 18 years of age or until sooner placed or discharged.*

(2) If the youth's behavior after being committed to the department of corrections *as provided in subsection (1)* indicates that the youth is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of corrections and with the approval of the board of pardons and parole, may revoke the commutation and return the youth to a state prison facility to serve out the youth's unexpired term, and the time spent by the youth at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities ~~is not considered as a part of~~ *may not be credited against* the youth's original sentence.

(3) ~~Upon~~ *Independent of the commutation of sentence procedures provided for in subsections (1) and (2),* on recommendation of the warden and with the approval of the department of corrections, a person under 18 years of age who has been sentenced to a state prison facility and who may benefit from programs offered at a youth correctional facility may be transferred to any youth correctional facility under the jurisdiction and control of the department of corrections.

(4) If the youth's behavior after transfer to a youth correctional facility indicates that the youth might be released on parole or that the youth's sentence might be commuted and the youth be discharged from custody, the superintendent of the facility, with the approval of the department of corrections, may make an appropriate recommendation to the board of pardons and parole and the governor, who may in their discretion parole the person or commute the youth's sentence.

(5) If the youth's behavior after transfer to a youth correctional facility indicates that the youth is not a proper person to reside in the facility, upon

recommendation of the superintendent and with the approval of the department of corrections, the youth must be returned to a state prison facility to serve out the unexpired term.”

**Section 35.** Section 52-5-112, MCA, is amended to read:

“**52-5-112. University aid to residents of schools.** The department of corrections may, on the recommendation of the superintendent, authorize a resident of a ~~state youth~~ correctional facility who has completed high school and who is otherwise eligible to receive up to \$800 per year toward the resident’s expenses incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing, books, board, and room and must be paid in the same manner as other expenses of the school. The board of regents of higher education may waive fees and tuition for these residents pursuant to 20-25-421. No more than eight residents of each ~~state youth~~ correctional facility may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents that it has designated to receive the benefits for the next school year.”

**Section 36.** Section 52-5-113, MCA, is amended to read:

“**52-5-113. Publication of information to facilitate return of youth leaving a state youth correctional facility or program without permission.** The department may publish the name and picture of and the offense and other information relating to a youth who has left a ~~state youth~~ correctional facility or program operated by the department or who is committed to the department and who presents a threat to public safety if the publication is determined by the department to be necessary to facilitate the youth’s return and to protect the public.”

**Section 37.** Section 52-5-114, MCA, is amended to read:

“**52-5-114. Penalty for aiding resident in leaving or not returning to youth correctional facility.** (1) A person is guilty of an offense if the person purposely or knowingly:

(a) permits or assists a resident of a ~~youth~~ correctional facility to leave a facility without permission;

(b) permits or assists a resident’s failure to return to a ~~youth~~ correctional facility from which the resident had permission to leave;

(c) furnishes or attempts to furnish to a resident a tool, weapon, or other article with the intent of aiding the resident to leave without permission or to not return; or

(d) harbors or conceals a resident who has left without permission.

(2) Upon conviction of a violation of subsection (1), a person shall be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding \$1,000, or both.”

**Section 38.** Section 52-5-120, MCA, is amended to read:

“**52-5-120. Youth industries programs.** The department of corrections may:

(1) establish *youth* industries programs in state ~~youth~~ correctional facilities that:

(a) assist in the training and rehabilitation of residents *who are youth* at ~~state youth~~ correctional facilities; and

(b) provide the production or manufacture of products and the rendering of services that may be needed by:

(i) a department or agency of the state of Montana or a unit of local government;

(ii) an agency of the federal government; or

(iii) an office or agency of another state or a political subdivision of another state;

(2) contract with private industry for the sale of goods produced or manufactured at ~~state youth~~ correctional facilities; and

(3) fix the purchase price for goods and services available under the industries program established in subsection (1).”

**Section 39.** Section 52-5-121, MCA, is amended to read:

“**52-5-121. Rulemaking authority.** The department of corrections may adopt rules necessary for administration of industries programs authorized in 52-5-120. Rules adopted by the department may include rules regarding:

(1) requirements for participation of youth in industries programs;

(2) the type of training and experience to be provided to youth under these programs;

(3) the type of goods and services to be sold under the industries programs;

(4) contracts with private industry for the sale of goods produced or manufactured at ~~state youth~~ correctional facilities; and

(5) payment of wages to youth working in industries programs.”

**Section 40.** Section 52-5-126, MCA, is amended to read:

“**52-5-126. Conditional release agreement.** (1) At least 30 days before a youth is released by the department of corrections from a ~~state youth~~ correctional facility to the supervision, custody, and control of the youth court, the department, youth, and juvenile probation officer assigned to the youth shall develop a conditional release agreement for the youth.

(2) At least 14 days before the youth is released, the department, youth, and juvenile probation officer shall finalize and sign the conditional release agreement. The agreement must contain a statement advising the youth of the youth’s rights under 41-5-1430 and the terms and conditions that may result in a revocation of the youth’s conditional release.

(3) A conditional release agreement for a youth released from a ~~state youth~~ correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, must remain in effect until the youth court no longer has custody of the youth.”

**Section 41.** Section 52-5-128, MCA, is amended to read:

“**52-5-128. Detention of youth who violates conditional release or escapes from facility or program.** (1) A juvenile probation officer may detain a youth who allegedly has violated the terms and conditions of the youth’s conditional release agreement. A law enforcement officer of the state or a county or a city shall detain a youth who has allegedly violated the terms and conditions of the youth’s conditional release agreement upon receipt of a warrant to detain the youth.

(2) The department of corrections may detain a youth who has escaped from a ~~state youth~~ correctional facility or program operated by or under contract with the department. A law enforcement officer of the state or a county or a city shall detain a youth upon notice in writing to the officer by the department that the youth has escaped from a ~~state youth~~ correctional facility or program operated by or under contract with the department.”

**Section 42.** Section 53-1-104, MCA, is amended to read:

“**53-1-104. Release of arsonist – notification of department of justice.** (1) Each of the following institutions, correctional facilities, or other facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or disorder shall give written notification to the department of justice when the person is admitted or released by it:

(a) the Montana state hospital;

(b) a state prison;

(c) a Montana ~~youth~~ correctional facility *housing youth*; or

- (d) a county or city detention facility.
- (2) The notification must disclose:
  - (a) the name of the person;
  - (b) where the person is or will be located; and
  - (c) the type of fire the person was involved in.”

**Section 43.** Section 53-1-105, MCA, is amended to read:

**“53-1-105. Disposition of contraband in correctional institution.**

(1) Cash possessed in excess of the amount allowed by the policy of an ~~adult or youth~~ correctional institution or obtained in violation of a policy may be confiscated and deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

(2) The department of corrections shall adopt policies for the disposition of other contraband confiscated from inmates or residents in ~~adult or youth~~ correctional institutions. Receipts from the sale of contraband must be deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.”

**Section 44.** Section 53-1-107, MCA, is amended to read:

**“53-1-107. (Temporary) Inmate financial transactions and trust account system.** (1) An inmate of a state prison, as defined in ~~53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)~~ *53-30-101(1), (2), and (4)*, shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. The department may charge an inmate a minimum fee, not to exceed \$2 each month, to administer the inmate’s account.

(2) The department may, consistent with administrative rules adopted by the department, use a portion of the funds in an inmate’s account to:

(a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;

(b) satisfy court-ordered child support;

(c) satisfy court-ordered fines, fees, or costs;

(d) pay for the inmate’s medical and dental expenses and costs of incarceration; and

(e) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.

(3) (a) Money taken under subsection (2) for the payment of restitution must be paid in the following order:

(i) to the victim until the victim’s unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113 until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(iii) to any other government agency that has compensated the victim for the victim’s pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim’s pecuniary loss.

(b) If there is a balance of money in the inmate’s account after payments under subsection (2), the department may allow the balance to accumulate in a savings subaccount for the inmate.

(4) (a) The department shall adopt rules to set a percentage of earnings not to exceed 25% that an inmate worker is required to save in a savings subaccount.

(b) The rules must include that, upon release of an inmate from a state prison, the department shall dispense money directly from the subaccount

to the former inmate, the inmate's landlord, or other approved recipients, including service providers.

(c) The department shall adopt rules to exempt the following inmates from participation in the mandatory inmate savings program under subsection (4)(a):

- (i) inmates who are of advanced age;
  - (ii) inmates who have a parole eligibility date that puts them at an advanced age at eligibility;
  - (iii) inmates who do not have parole eligibility and are serving a long sentence that puts them at an advanced age upon their discharge date;
  - (iv) inmates who are serving a life sentence but have a parole eligibility date that puts them at an advanced age at eligibility; and
  - (v) inmates who are not eligible for parole and are serving life sentences.
- (5) The department shall adopt rules establishing the prison inmate trust account system and criteria for the use of funds under this section. The rules must contain clear guidelines regarding the use of funds that ensure payment under subsection (2) and that inhibit an inmate's ability to deal in contraband or illegal acts within or outside the state prison.

(6) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from sources outside the state prison that is not deposited in the account provided for in subsection (1). (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

**53-1-107. (Effective July 1, 2021) Inmate financial transactions and trust account system.** (1) An inmate of a state prison, as defined in ~~53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)~~ *53-30-101(1), (2), and (4)*, shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. The department may charge an inmate a minimum fee, not to exceed \$2 each month, to administer the inmate's account.

(2) The department may, consistent with administrative rules adopted by the department, use a portion of the funds in an inmate's account to:

- (a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;
- (b) satisfy court-ordered child support;
- (c) satisfy court-ordered fines, fees, or costs;
- (d) pay for the inmate's medical and dental expenses and costs of incarceration; and
- (e) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.

(3) (a) Money taken under subsection (2) for the payment of restitution must be paid in the following order:

- (i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
- (ii) to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;
- (iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If there is a balance of money in the inmate's account after payments under subsection (2), the department may allow the balance to accumulate in a savings subaccount for the inmate.

(4) (a) The department shall adopt rules to set a percentage of earnings not to exceed 25% that an inmate worker is required to save in a savings subaccount.

(b) The rules must include that, upon release of an inmate from a state prison, the department shall dispense money directly from the subaccount to the former inmate, the inmate's landlord, or other approved recipients, including service providers.

(c) The department shall adopt rules to exempt the following inmates from participation in the mandatory inmate savings program under subsection (4)(a):

(i) inmates who are of advanced age;

(ii) inmates who have a parole eligibility date that puts them at an advanced age at eligibility;

(iii) inmates who do not have parole eligibility and are serving a long sentence that puts them at an advanced age upon their discharge date;

(iv) inmates who are serving a life sentence but have a parole eligibility date that puts them at an advanced age at eligibility; and

(v) inmates who are not eligible for parole and are serving life sentences.

(5) The department shall adopt rules establishing the prison inmate trust account system and criteria for the use of funds under this section. The rules must contain clear guidelines regarding the use of funds that ensure payment under subsection (2) and that inhibit an inmate's ability to deal in contraband or illegal acts within or outside the state prison.

(6) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from sources outside the state prison that is not deposited in the account provided for in subsection (1)."

**Section 45.** Section 53-1-109, MCA, is amended to read:

**"53-1-109. Facility resident and prison inmate welfare account.**

(1) There is an account in the state special revenue fund. The net proceeds from Pine Hills youth correctional facility resident and state prison inmate canteen purchases and resident or inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of residents or inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the Pine Hills youth correctional facility and state prisons in proportion to the amount that each facility contributed to the fund. The superintendent of the Pine Hills youth correctional facility and the administrator of each state prison shall consult with the residents and inmates in the superintendent's or administrator's respective facility about the use of the money allocated to the Pine Hills youth correctional facility or the state prison and may use the money for the needs of that facility's residents or inmates and their families.

(3) For purposes of this section, “state prison” has the meaning provided in ~~53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)~~ *53-30-101(1), (2), and (4).*”

**Section 46.** Section 53-1-201, MCA, is amended to read:

**“53-1-201. Purpose of department of corrections.** The department of corrections shall use at maximum efficiency the resources of state government in a coordinated effort to:

(1) develop and maintain comprehensive services and programs in the field of adult and youth corrections; and

(2) provide for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of ~~youth alleged to be youth in need of intervention or formerly adjudicated~~ delinquent youth who are referred or committed to the department.”

**Section 47.** 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 a state prison as defined 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 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 *as defined in 41-5-103*; and

(b) any other facility or program *under contract with the department* 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.~~

*(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature.”*

**Section 48.** Section 53-1-203, MCA, is amended to read:

**“53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

(a) subject to subsection (6), adopt rules necessary:

(i) for the siting, establishment, and expansion of prerelease centers;

(ii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iii) for the establishment and maintenance of residential methamphetamine treatment programs; and

(iv) for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes,

taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 46-18-201 or 46-18-202 and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) encourage efforts within the department and at the local level that would develop housing options and resource materials related to housing for individuals who are released from the Montana state prison or community corrections programs;

(h) maintain data on the number of individuals who are discharged from the adult correction services listed in 53-1-202 into a homeless shelter or a homeless situation;

(i) administer all state and federal funds allocated to the department for delinquent youth, as defined in 41-5-103;

(j) collect and disseminate information relating to youth who are committed to the department for placement in a ~~state youth~~ correctional facility *as defined in 41-5-103*;

(k) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

(l) provide funding for youth who are committed to the department for placement in a ~~state youth~~ correctional facility *as defined in 41-5-103*;

(m) administer ~~youth~~ correctional facilities *as defined in 41-5-103*; and

(n) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in ~~state youth~~ correctional facilities.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(7) The department shall ensure that risk and needs assessments drive the department's supervision and correctional practices, including integrating assessment results into supervision contact standards and case management. The department shall regularly validate its risk assessment tool."

**Section 49.** Section 53-1-207, MCA, is amended to read:

**"53-1-207. Authorization of inmate labor for designated construction projects – exemptions.** (1) The department of corrections is authorized to use inmate labor for the purpose of construction projects at ~~the Montana~~ a state prison that are authorized by the legislature.

(2) The department of administration shall provide for construction of the projects authorized by this section, which are to be built by the lowest responsible bidder, with contract specifications to allow the use of inmate labor. The percentage of inmate labor must be determined prior to the advertising for bid of the projects through negotiations among the department of corrections, the department of administration, representatives of construction industry employers, and representatives of the building trades."

**Section 50.** Section 53-30-101, MCA, is amended to read:

**“53-30-101. Location and function of prisons — definitions *State prison — definition.*** (1) The correctional facility at Deer Lodge is the Montana state prison, and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult male criminal offenders:

(2) The correctional facility located in Billings is the Montana women’s prison, and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult female criminal offenders:

(3) As used in this title, unless the context indicates otherwise, the following definitions apply “*state prison*” means:

(a) “Montana state prison” means the correctional facility located at Deer Lodge:

(b) “Montana women’s prison” or “women’s prison” means the correctional facility located at Billings:

(c) “State prison” means:

(i) the Montana state prison;

(ii) the Montana women’s prison;

(1) a state penal or correctional institution whose primary function is to provide for the custody, treatment, training, and rehabilitation of adult criminal offenders;

(iii)(2) a state penal or correctional facility portion of a Montana regional correctional facility;

(iv)(3) a detention center, a state penal facility, or a correctional facility in another jurisdiction detaining Montana inmates from Montana pursuant to 53-30-106;

(v)(4) a private correctional facility or penal facility licensed by the department of corrections or a private correctional facility or penal facility portion of a Montana regional correctional facility licensed by the department of corrections; or

(vi)(5) a combination of the facilities listed in this subsection (3)(c) section.”

**Section 51.** Section 53-30-102, MCA, is amended to read:

**“53-30-102. Qualifications of state prison warden of state prison and warden of women’s prison.** The warden of the Montana a state prison and the warden of the women’s prison must be persons trained through education and experience in directing a custody, treatment, training, or rehabilitation, or custodial program in a penal or correctional institution.”

**Section 52.** Section 53-30-141, MCA, is amended to read:

**“53-30-141. Extension of limits of confinement.** (1) The department of corrections may extend the limits of confinement of the Montana state prison in Deer Lodge for purposes of housing outside the prison fence inmates who:

(a) are employed in ranch or agricultural industry programs; and

(b) have demonstrated sufficient reliability and trustworthiness.

(2) Housing units outside the confines of the prison fence may be created by renovation of existing buildings or by the erection of modular-type units and associated facilities on the prison ranch.

(3) For the purpose of expediting the acquisition and construction of housing units authorized in subsection (2) the department of administration may exempt the project from provisions of Montana law relating to the employment of architects, advertising, labor, and wages. The department of administration need not comply with any state bidding requirements that would preclude a sole source purchase.”

**Section 53.** Section 53-30-702, MCA, is amended to read:

**“53-30-702. Definitions.** As used in this part, the following definitions apply:

(1) “Administrative segregation” means a nonpunitive housing status for inmates whose continued presence in the general population may pose a serious threat to life, property, self, staff, other inmates, or the facility’s security or orderly operation.

(2) “Administrator” means the official, regardless of local title, who is ultimately responsible for the operation and management of a division, facility, or program.

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

(4) “Disability” means a physical or mental impairment that substantially limits one or more of a person’s major life activities, a person who has a record of such an impairment, or a person who is regarded as having such an impairment.

(5) “Disciplinary detention” means a form of separation from the general population in which an inmate who has committed a serious violation of conduct regulations is confined to an individual cell by a disciplinary committee or other authorized group for short periods of time.

(6) “Facility” means a state prison *as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v) 53-30-101(1), (2), and (4) or a youth correctional facility pursuant to 52-5-101.*

(7) “Mental disorder” means exhibiting impaired emotional, cognitive, or behavioral functioning that interferes seriously with an individual’s ability to function adequately except with supportive treatment or services. The individual also must:

(a) currently have or have had within the past year a diagnosed mental disorder; and

(b) currently exhibit significant signs and symptoms of a mental disorder.

(8) “Postpartum” means the first 6 weeks after delivery.

(9) “Prehearing confinement” means a short-term, nonpunitive housing status that is used to safely and securely control high-risk or at-risk inmates.

(10) “Protective custody” means a form of separation from the general population for an inmate who requests or requires protection from other inmates for reasons of health or safety.

(11) “Qualified mental health professional” includes psychiatrists, psychologists, psychiatric social workers, licensed professional counselors, psychiatric nurses, or others who, by virtue of their education, credentials, and experience, are permitted by law to evaluate and care for the mental health needs of patients.

(12) “Restrictive housing” means a placement that requires an inmate to be confined to a cell for at least 22 hours a day for the safe and secure operation of the facility. The term includes administrative segregation, protective custody, and disciplinary detention.

(13) “Step-down program” means an individualized program that includes a system of review and establishes criteria to prepare an inmate for transition to the general population or the community and that involves a coordinated, multidisciplinary team approach that includes mental health, case management, and security practitioners.

(14) “Temporary confinement” has the same meaning as “prehearing confinement” as defined in this section.”

Approved April 30, 2021

**CHAPTER NO. 340**

[SB 345]

AN ACT REVISING DAMAGES AND PENALTY DISTRIBUTION UNDER THE MONTANA FALSE CLAIMS ACT; AND AMENDING SECTION 17-8-410, MCA.

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

**Section 1.** Section 17-8-410, MCA, is amended to read:

**“17-8-410. Distribution of damages and civil penalty.** (1) 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 and initiated 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.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to 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~~ *Any damages and civil penalties that remain after calculation and distribution to the person under subsections (1) through (5) must be distributed first to fully reimburse any losses suffered by the governmental entity as a result of the defendant's actions, and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity. Reimbursement must be made to the trust fund or program of the governmental entity that suffered the loss. If more than one trust fund or program suffered a loss and there are not enough recovered funds to fully reimburse each, then the distribution must be proportionate.*

(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.”

Approved April 30, 2021

## CHAPTER NO. 341

[SB 348]

AN ACT REVISING LAWS RELATED TO USE OF RECLAIMED WASTEWATER FOR SNOWMAKING; PROVIDING A DEFINITION; AND AMENDING SECTIONS 75-6-102 AND 75-6-104, MCA.

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

**Section 1.** Section 75-6-102, MCA, is amended to read:

**“75-6-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) *“Applicant” means a person who submits plans and specifications for approval pursuant to this part.*

~~(1)~~(2) *“Board” means the board of environmental review provided for in 2-15-3502.*

~~(2)~~(3) *“Certified source water protection area” means an area certified by the department that identifies the surface and subsurface area surrounding a source of water for a public water supply system through which contaminants may move toward and reach the source of supply.*

~~(3)~~(4) *“Community water system” means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.*

~~(4)~~(5) *“Contamination” means impairment of the quality of state waters by sewage, industrial waste, or other waste creating a hazard to human health.*

~~(5)~~(6) *“Cross-connection” means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.*

~~(6)~~(7) *“Department” means the department of environmental quality provided for in 2-15-3501.*

~~(7)~~(8) *“Drainage” means rainfall, surface, and subsoil water.*

~~(8)~~(9) *“Industrial waste” means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.*

(9)(10) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

(10)(11) "Other waste" 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.

(11)(12) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

(12)(13) (a) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a 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 that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(13)(14) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

(14)(15) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

(15)(16) "Reclaimed wastewater" means wastewater that is treated by a public sewage system for reuse for private, public, or commercial purposes.

(16)(17) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

(17)(18) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(18)(19) "Source water protection program" means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.

(19)(20) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(20)(21) "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year."

**Section 2.** Section 75-6-104, MCA, is amended to read:

**"75-6-104. Duties of department.** The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; ~~and~~

(12) enter into agreements with local boards of health whenever appropriate for the performance of surveys and inspections under the provisions of this part; *and*

(13) *review in the form of a written response within 60 days to an applicant seeking approval for use of reclaimed wastewater for snowmaking subject to 75-6-103(2)(k) that:*

*(a) approves, approves with conditions, or denies the application pursuant to the provisions of this part; and*

*(b) (i) describes additional information that must be submitted prior to department approval under subsection (13)(a); or*

*(ii) describes any additional requirements that the applicant must satisfy prior to department approval under subsection (13)(a), such as a permit to discharge under Title 75, chapter 5, part 4, or an authorization under Title 85 from the department of natural resources and conservation."*

Approved April 30, 2021

## CHAPTER NO. 342

[SB 358]

AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, 75-5-317, AND

75-5-320, MCA; REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Transition for nutrient standards.** (1) By March 1, 2022, the department of environmental quality shall adopt rules related to narrative nutrient standards in consultation with the nutrient work group.

(2) The rules shall provide for the development of an adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality, and that:

- (a) reasonably balances all factors impacting a water body;
- (b) prioritizes the minimization of phosphorus, taking into account site-specific conditions; and
- (c) identifies the appropriate response variables affected by nutrients and associated impact thresholds in accordance with the beneficial uses of the waterbody.

(3) In developing the rules in subsection (2), the department shall consider options pertaining to whether the point source is new or existing and whether the receiving water body is considered impaired or unimpaired.

**Section 2. Transition for nutrient standards -- department.** (1) Until final rules are adopted pursuant to [section 1], the department shall administer the discharge permitting program under 75-5-402 in a manner consistent with ARM 17.30.637 and the intent of [this act].

(2) Any nutrient standards variances currently authorized and effective are hereby authorized and effective under 75-5-320 until otherwise amended or repealed.

**Section 3. Board to amend rules.** The board of environmental review shall amend ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 4. Department to amend rules.** The department of environmental quality shall amend ARM 17.30.602 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 5.** Section 75-5-103, MCA, is amended to read:

**“75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) “Associated supporting infrastructure” means:
- (a) electric transmission and distribution facilities;
  - (b) pipeline facilities;
  - (c) aboveground ponds and reservoirs and underground storage reservoirs;
  - (d) rail transportation;
  - (e) aqueducts and diversion dams;
  - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
  - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) ~~“Base numeric nutrient standards” means numeric water quality criteria 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.

~~(3)~~(2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)~~(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~(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.

~~(7)~~(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).

~~(8)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~(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.

~~(11)~~(10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(11) "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.

~~(13)~~(12) "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.

~~(14)~~(13) "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.

(15)(14) "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.

(16)(15) "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.

(17)(16) "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.

(18)(17) "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.

(19)(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20)(19) "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.

(21)(20) "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.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23)(21) "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 nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.~~

(24)(22) "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.

(25)(23) "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.

(26)(24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(27)(25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(28)(26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(29)(27) "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.

(30)(28) (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) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection (30)(b)(iii) (28)(b)(iii) does not require a mixing zone.

(31)(29) "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.

(32)(30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(33)(31) "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.

(34)(32) (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.

(35)(33) "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.

(36)(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.

~~(37)~~(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.

~~(38)~~(36) “Treatment works” means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(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.

~~(40)~~(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.

~~(41)~~(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.

~~(42)~~(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.

**75-5-103. (Effective on occurrence of contingency) Definitions.**

Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Associated supporting infrastructure” means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2)~~ (a) “Base numeric nutrient standards” means numeric water quality criteria 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.

~~(3)~~(2) “Board” means the board of environmental review provided for in 2-15-3502.

~~(4)~~(3) “Contamination” means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~(4) “Council” means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~(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.

~~(7)~~(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).

~~(8)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~(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.

~~(11)~~(10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(11) "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.

~~(13)~~(12) "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.

~~(14)~~(13) "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.

~~(15)~~(14) "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.

~~(16)~~(15) "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.

(17)(16) "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.

(18)(17) "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.

(19)(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20)(19) "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.

(21)(20) "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.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23)(21) "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 nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.~~

(24)(22) "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.

(25)(23) "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.

(26)(24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(27)(25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(28)(26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(29)(27) "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.

~~(30)(28)~~ (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) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ *(28)(b)(iii) and (28)(b)(iv)* does not require a mixing zone.

~~(31)(29)~~ *(29)* "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.

~~(32)(30)~~ *(30)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)(31)~~ *(31)* "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.

~~(34)(32)~~ *(32)* (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.

~~(35)(33)~~ *(33)* "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.

~~(36)(34)~~ *(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.

(37)(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.

(38)(36) “Treatment works” means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39)(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.

(40)(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.

(41)(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.

(42)(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 6.** Section 75-5-105, MCA, is amended to read:

**“75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ *The* data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section.”

**Section 7.** 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;

(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;

(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;

(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;

(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;

(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;

(p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(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;

(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;

(s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

(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

(u) *discharges of total phosphorus or total nitrogen that do not:*

(i) *create conditions that are toxic or harmful to human, animal, plant, and aquatic life;*

(ii) *create conditions that produce undesirable aquatic life; or*

(iii) *cause measurable changes in aquatic life; and*

(v) *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)*

~~(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 8.** Section 75-5-320, MCA, is amended to read:

**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2) and ~~75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

(a) a variance will not result in a lowering of currently attained, ambient water quality;

(b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and

(c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and

(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

**Section 9. Repealer.** The following sections of the Montana Code Annotated are repealed:

75-5-313. Nutrient standards variances -- individual, general, and alternative.

75-5-314. Confidentiality of base numeric standards and nutrient standards variances.

75-5-319. Compliance schedule for base numeric nutrient standards.

**Section 10. Repealer.** ARM 17.30.660 is repealed.

**Section 11. Codification instruction.** [Sections 1 and 2] 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 and 2].

**Section 12. Saving clause.** [This act] does not affect nutrient standards variances granted before [the effective date of this act], or rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 13. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 2021

## CHAPTER NO. 343

[SB 360]

AN ACT GENERALLY REVISING LAWS RELATED TO FISHERIES MANAGEMENT; REQUIRING A REVIEW OF THE EXISTING STATE FISHERIES MANAGEMENT PLAN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Review of state fisheries management plan.** By January 1, 2023, the department shall complete a review of the existing state fisheries management plan. The department shall seek and consider public input in the process, including through extensive public meetings prior to June 1, 2023.

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

Approved April 30, 2021

## CHAPTER NO. 344

[SB 364]

AN ACT GENERALLY REVISING INSURANCE LAWS; PROVIDING A FRAMEWORK FOR LIQUIDITY STRESS TESTING; PROVIDING THE COMMISSIONER CERTAIN AUTHORITY TO REQUIRE CERTAIN DOMICILIARY HOLDING COMPANIES TO FILE A GROUP CAPITAL CALCULATION AND LIQUIDITY STRESS TEST; ADDING CONFIDENTIALLY PROTECTIONS FOR DATA THAT GROUPS MAY SUBMIT FOR THE GROUP CAPITAL CALCULATION AND LIQUIDITY STRESSTEST; PROVIDING REGULATORY LAWS FOR INTERNATIONALLY ACTIVE INSURANCE GROUPS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 33-2-1101, 33-2-1111, AND 33-2-1116, MCA.

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

**Section 1.** Section 33-2-1101, MCA, is amended to read:

**“33-2-1101. Definitions.** As used in this part, the following definitions apply unless the context requires otherwise:

(1) An “affiliate” of or person “affiliated” with a specific person is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(2) “Control”, including the terms “controlling”, “controlled by”, and “under common control with”, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person. This power may be evidenced through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 33-2-1112 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) “Enterprise risk” means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole. The term includes but is not limited to anything that would cause the insurer’s risk-based capital to fall into a company action level, as provided in 33-2-1904, or that would cause the insurer to be in hazardous financial condition as determined by the commissioner pursuant to 33-2-1321.

(4) “Group-wide supervisor” means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under [section 4] to have sufficient significant contacts with the internationally active insurance group.

(5) “Group capital calculation instructions” means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

~~(4)~~(6) “Insurance holding company system” means two or more affiliated persons, one or more of which is an insurer.

~~(5)~~(7) “Insurer” has the meaning provided in 33-1-201, except that the term does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(8) “Internationally active insurance group” means an insurance holding company system that includes an insurer registered under 33-2-1111 and meets the following criteria:

(a) premiums written in at least three countries;

(b) the percentage of gross premiums written outside the United States is at least 10% of the insurance holding company system’s total gross written premiums; and

(c) based on a 3-year rolling average, the total assets of the insurance holding company system are at least \$50 billion or the total gross written premiums of the insurance holding company system are at least \$10 billion.

(9) “NAIC” means the national association of insurance commissioners.

(10) “NAIC liquidity stress test framework” means a separate NAIC publication that includes a history of the NAIC’s development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, the scope criteria, instructions, and reporting template as adopted by the

*NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.*

(6)(11) (a) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(b) The term does not include any securities broker performing no more than the usual and customary broker's function.

(12) *The "scope criteria", as detailed in the NAIC liquidity stress test framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year.*

(7)(13) A "securityholder" of a specified person is one who owns any security of that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(8)(14) A "subsidiary" of a specified person is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(9)(15) "Voting security" means any security convertible into or evidencing a right to acquire a voting security."

**Section 2.** Section 33-2-1111, MCA, is amended to read:

**"33-2-1111. Registration of insurers – requisites – termination.**

(1) An insurer authorized to do business in this state that is a member of an insurance holding company system shall register with the commissioner, except that a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section is not required to register.

(b) Any insurer subject to registration under this section shall register within 15 days after becoming subject to registration, unless the commissioner for good cause extends the time for registration.

(c) The commissioner may require any authorized insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority in the jurisdiction where the company is domiciled.

(2) An insurer subject to registration shall file with the commissioner, on or before April 30 each year, a registration statement on a form provided by the commissioner that must contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity and relationship of every member of the insurance holding company system;

(c) transactions currently outstanding or that occurred during the last calendar year between the insurer and its affiliates and the following agreements that are in force:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) management and service contracts and cost-sharing arrangements;

- (vi) reinsurance agreements;
- (vii) dividends and other distributions to shareholders; and
- (viii) consolidated tax allocation agreements;

(d) a pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance holding company system;

(e) if requested by the commissioner, financial statements of or within an insurance holding company system, including all affiliates, which may include annual audited financial statements filed with the U.S. securities and exchange commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or the most recently filed parent corporation financial statements filed with the U.S. securities and exchange commission;

(f) statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, have implemented, and continue to maintain and monitor corporate governance and internal control procedures;

(g) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in registration forms adopted or approved by the commissioner; and

(h) any other information required by the commissioner by rule.

(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.

(4) Information need not be disclosed on the registration statement filed pursuant to subsection (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of 1% or less of an insurer's admitted assets as of the prior December 31 are not material for purposes of this section. *The definition of materiality provided in this subsection does not apply for purposes of the group capital calculation of the liquidity stress test framework.*

(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.

(6) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which the registered insurer learns of each change or addition.

(7) (a) The ultimate controlling person of every insurer subject to registration under this section shall also file an annual enterprise risk report. The report must identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer to the best of the controlling person's knowledge and belief. The report must be filed with the lead state commissioner of the insurance holding company system, as determined by the procedures within the financial analysis handbook adopted by rule of the commissioner.

(b) *Except as provided in this section, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report must be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group*

*capital calculation. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the financial analysis handbook adopted by the NAIC. Insurance holding company systems described below are exempt from filing the group capital calculation:*

*(i) an insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and assumes no business from any other insurer;*

*(ii) an insurance holding company system that is required to perform a group capital calculation specified by the United States federal reserve board. The lead state commissioner shall request the calculation from the federal reserve board under the terms of information-sharing agreements in effect. If the federal reserve board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing.*

*(iii) an insurance holding company system whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction as described in 33-2-1216 that recognizes the U.S. state regulatory approach to group supervision and group capital;*

*(iv) an insurance holding company system:*

*(A) that provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC financial analysis handbook; and*

*(B) whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation as the worldwide group capital assessment for U.S. insurance groups who operate in that jurisdiction;*

*(v) notwithstanding the provisions of subsections (7)(b)(iii) and (7)(b)(iv), a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace;*

*(vi) notwithstanding the exemptions from filing the group capital calculation stated in subsections (7)(b)(i) through (7)(b)(iv), the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation;*

*(vii) if the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown;*

*(c) The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing must be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the NAIC:*

(i) *The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the financial stability task force or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured are effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC financial stability task force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC financial stability task force or its successor, determines the insurer should be scoped into the framework for that data year.*

(ii) *Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity stress test framework on a frequent basis. The lead state insurance commissioner, in consultation with the financial stability task force or its successor, will assess this concern as part of the determination for an insurer.*

(iii) *The performance of, and filing of the results from, a specific year's liquidity stress test must comply with the NAIC liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in conjunction with the financial stability task force or its successor, provided within the framework.*

(8) The commissioner shall terminate the registration of any insurer that demonstrates that the insurer no longer is a member of an insurance holding company system.

(9) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(10) The commissioner may allow an insurer that is authorized to do business in this state and that is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section."

**Section 3.** Section 33-2-1116, MCA, is amended to read:

**"33-2-1116. Confidentiality of information.** (1) Documents, materials, and other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all other information *provided to the department of insurance reported* pursuant to 33-2-1104(3)(l), 33-2-1104(3)(m), 33-2-1111, and 33-2-1113 are confidential information as provided in 2-6-1002 and Title 2, chapter 6, part 10, are recognized by this state as being proprietary and contain trade secrets, and are confidential by law and privileged, are not subject to subpoena or discovery, and are not admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, and other information to further any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which the documents, materials, or other information pertains unless the commissioner, after giving notice and an opportunity to be heard to the insurer

and the insurer's affiliates who would be affected, determines that the interest of policyholders, shareholders, or the public would be served by the publication. On a determination that the interest of policyholders, shareholders, or the public would be served, the commissioner may publish all or any part of the documents, materials, or other information in a manner that the commissioner considers appropriate.

(a) *For purposes of the information reported and provided to the department of insurance pursuant to 33-2-1111(7)(b), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the federal reserve board or any U.S. group-wide supervisor.*

(b) *For purposes of the information reported and provided to the department pursuant to 33-2-1111(7)(c), the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the federal reserve board and non-U.S. group-wide supervisors.*

(2) Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner, or with whom the documents, materials, or other information is shared under Title 33, chapter 2, part 4, and this section, may be required or permitted to testify in a private civil action concerning any confidential documents, materials, or information subject to subsection (1).

(3) To assist in the performance of the commissioner's duties, the commissioner:

(a) may, subject to subsection (3)(b), share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1), *including proprietary and trade secret documents and materials* with other state, federal, and international regulatory agencies, with the NAIC ~~and its affiliates and subsidiaries~~, and *with any third-party consultants designated by the commissioner*, with state, federal, and international law enforcement authorities, including members of a supervisory college. To receive the shared documents, materials, or other information, the recipient shall verify in writing that the recipient has the legal authority to maintain confidentiality and agree in writing to maintain the confidentiality and privileged status of the documents, materials, or other information.

(b) may share confidential and privileged documents, materials, or other information reported pursuant to 33-2-1111(7) only with insurance regulators of states having statutes or regulations substantially similar to subsection (1) and only if the respective insurance regulators have agreed in writing not to disclose the documents, materials, or other information;

(c) may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, *including proprietary and trade-secret information*, from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions; and

(d) shall maintain as confidential or privileged any document, materials, or other information received under subsection (3)(c) with notice or the understanding that the document, materials, or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, materials, or information.

(4) (a) The commissioner shall enter into written agreements with the NAIC *and any third-party consultant designated by the commissioner*

governing the sharing and use of information provided pursuant to Title 33, chapter 2, part 4, and this section.

(b) An agreement with the NAIC under this subsection (4) must:

(i) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC ~~and its affiliates and subsidiaries~~ or a *third-party consultant designated by the commissioner* pursuant to Title 33, chapter 2, part 4, and this section, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;. *The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;*

(ii) specify that ownership information shared with the NAIC or a *third-party consultant* ~~and its affiliates and subsidiaries~~ pursuant to Title 33, chapter 2, part 4, and this section remains with the commissioner and that the NAIC's or a *third-party consultant's, as designated by the commissioner,* use of the information is subject to the direction of the commissioner;

(iii) ~~excluding documents, material, or information reported pursuant to 33-2-1111, prohibit the NAIC or third-party consultant designated by the commissioner from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;~~

~~(iii)(iv)~~ (iv) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a *third-party consultant designated by the commissioner* pursuant to Title 33, chapter 2, part 4, and this section is subject to a request or a subpoena to the NAIC or a *third-party consultant designated by the commissioner* for disclosure or production; ~~and~~

~~(iv)(v)~~ (v) require the NAIC or a *third-party consultant designated by the commissioner* ~~and its affiliates and subsidiaries~~ to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a *third-party consultant designated by the commissioner* ~~and its affiliates and subsidiaries~~ may be required to disclose confidential information about the insurer that has been shared with the NAIC and its affiliates and subsidiaries pursuant to Title 33, chapter 2, part 4, and this section; ~~and~~

(vi) *for documents, material, or information reporting pursuant to 33-2-1111(7)(c) in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurers.*

(5) The sharing of information by the commissioner pursuant to Title 33, chapter 2, part 4, and this section does not constitute a delegation of regulatory authority or rulemaking. The commissioner is solely responsible for the administration, execution, and enforcement of the provisions of Title 33, chapter 2, part 4, and this section.

(6) Disclosure to the commissioner of information under this section or as a result of sharing of confidential information authorized under subsections (3) and (4) does not constitute a waiver of any applicable privilege or claim of confidentiality related to the information obtained under Title 33, chapter 2, part 4, and this section.

(7) Documents, materials, and other information in the possession or control of the NAIC or a *third-party consultant designated by the commissioner* pursuant to Title 33, chapter 2, part 4, and this section are confidential information as provided in 2-6-1002 and privileged, are not admissible in evidence in a private civil action, and are not subject to subpoena or discovery.

(8) *The group capital calculation and resulting group capital ratio required under 33-2-1111 and the liquidity stress test along with its results and supporting disclosures required under 33-2-1111 are regulatory tools*

*for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this title, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement."*

**Section 4. Group-wide supervision of internationally active insurance groups.** (1) (a) The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

- (i) does not have substantial insurance operations in the United States;
- (ii) has substantial insurance operations in the United States, but not in this state; or
- (iii) has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in subsections (2) and (6) that the other regulatory official is the appropriate group-wide supervisor.

(b) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(2) (a) In cooperation with other state, federal, and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection (2):

(i) the place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets, or liabilities;

(ii) the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group;

(iii) the location of the executive offices or largest operational offices of the internationally active insurance group;

(iv) whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be substantially similar to the system of regulation provided under the laws of this state, or otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(v) whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

(b) However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in subsections (2)(a)(i) through (2)(a)(v) and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(3) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:

(a) the internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or

(b) this state being the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection (2).

(4) Pursuant to 33-2-1115 the commissioner is authorized to collect from any insurer registered pursuant to 33-2-1111 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to this section and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group has not less than 30 days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the Montana administrative register and on its internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(5) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(a) assess the enterprise risks within the internationally active insurance group to ensure that:

(i) the material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(ii) reasonable and effective mitigation measures are in place;

(b) request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including but not limited to information about the members of the internationally active insurance group regarding:

(i) governance, risk assessment, and management;

(ii) capital adequacy; and

(iii) material intercompany transactions;

(c) coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(d) communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of 33-2-1116, through supervisory colleges as provided for in Title 33, chapter 2, part 11, or otherwise;

(e) enter into agreements with or obtain documentation from any insurer registered under 33-2-1111, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation may not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(f) other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

(6) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(a) the commissioner's cooperation is in compliance with the laws of this state; and

(b) the regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

(7) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under 33-2-1111, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(8) The commissioner may promulgate rules necessary for the administration of this section.

(9) A registered insurer subject to this section is liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

**Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 33, chapter 2, part 11, and the provisions of Title 33, chapter 2, part 11, apply to [section 4].

Approved April 30, 2021

## CHAPTER NO. 345

[SB 367]

AN ACT GENERALLY REVISING LAWS RELATING TO THE INDEPENDENT CONTRACTOR CERTIFICATE; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY NOT PRESUME AN EMPLOYMENT RELATIONSHIP BECAUSE A PARTY DOES NOT HOLD AN INDEPENDENT CONTRACTOR CERTIFICATE; APPLYING TO UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION; AMENDING SECTIONS 39-51-203 AND 39-71-419, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, the Department of Labor and Industry's rule ARM 24.35.203 provides that when a worker does not have an independent contractor certificate, the worker is conclusively determined by the Department to be an employee for the purposes of wages and hours, unemployment insurance, workers' compensation, and income tax; and

WHEREAS, this interpretation is overly broad, does not correctly consider Montana Supreme Court caselaw, leads to confusion, conflicts with established law, and results in unfair determinations.

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

**Section 1.** Section 39-51-203, MCA, is amended to read:

**"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual, by a manager or member of a limited liability company treated as a corporation pursuant to 39-51-207, or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and outside this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

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

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

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and outside the state, but the service performed outside the state is incidental to the individual's service

within the state; for example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) and performed entirely outside the state and on which contributions are neither required nor paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing the services is a resident of this state and the department approves the election of the employing unit for whom the services are performed in order that the entire service of the individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter until it is shown to the satisfaction of the department that the individual is an independent contractor. *An individual may not be determined to be an employee based solely on not having an independent contractor exemption certificate.*

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including those individuals who work for the state of Montana, its universities, public schools, components or units of universities or public schools, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of subsection (2) or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation that is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on the service under the law of this state.

(b) An "American employer", for purposes of this subsection (7), means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state."

**Section 2.** Section 39-71-419, MCA, is amended to read:

**“39-71-419. Independent contractor violations – penalty.** (1) A person may not:

- (a) perform work as an independent contractor without first:
  - (i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a); or
  - (ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;
- (b) perform work as an independent contractor when the department has revoked or denied the independent contractor’s exemption certificate;
- (c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;
- (d) alter or falsify an independent contractor exemption certificate; or
- (e) misrepresent the person’s status as an independent contractor. *A person who falsely claimed, either in writing or through credible evidence, to have an independent contractor certification may not be considered to be an employee solely based on not actually having an independent contractor exemption certificate. The burden of proof that an independent contractor is certified rests with the independent contractor and not the hiring entity.*

(2) An employer may not:

- (a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer’s obligations to provide workers’ compensation coverage; or
- (b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-417(4).

(3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each violation. The department shall deposit the fines in the uninsured employers’ fund. The lien provisions of 39-71-506 apply to any assessed fines.

(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers’ compensation court for resolution.”

**Section 3. Applicability.** [This act] applies to employment determinations for the purposes of unemployment insurance and workers’ compensation on or after [the effective date of this act].

Approved April 30, 2021

## CHAPTER NO. 346

[SB 370]

AN ACT GENERALLY REVISING DISASTER AND EMERGENCY POWERS LAWS; PROTECTING CERTAIN CONSTITUTIONAL RIGHTS DURING AN EMERGENCY; REVISING THE DECLARATION OF POLICY; CLARIFYING THE LIMITATIONS ON AUTHORITY DURING AN EMERGENCY; PROVIDING FOR CIVIL RELIEF; AMENDING SECTIONS 10-3-101 AND 10-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*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 ensure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state 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 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, local governments, and tribal 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, its political subdivisions, and tribal governments 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 state, tribal government, or federal emergency or disaster declarations;

(11) *ensure the protections under the first amendment of the United States constitution and under Article II, sections 6 and 7, of the Montana constitution of the rights of free speech, freedom of assembly, freedom of the press, and the right to petition the government for a redress of grievances; and*

(12) *ensure the protection of the rights under the second amendment of the United States constitution and under Article II, section 12, of the Montana constitution.”*

**Section 2.** Section 10-3-102, MCA, is amended to read:

**“10-3-102. Limitations.** Parts 1 through 4 of this chapter may not be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by parts 1 through 4 of this chapter or other laws

may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

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

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

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

(5) *prohibit, limit, or curtail:*

(a) *political activities, including voter registration drives, fundraising activities, political rallies and meetings, activities associated with political clubs and parties, campaign speeches, literature or sign distribution, and campaign efforts of a political party, a candidate for elected office, or a political committee or relating to a ballot initiative or referendum;*

(b) *rights of free speech or free assembly, including any rallies, gatherings and meetings, speeches, literature or sign distribution, and the display of signs. A person may be required to comply with neutral health, safety, or occupational requirements that are applicable to all organizations or businesses providing essential services.*

(c) *the production, operation, or distribution or any television, radio, cable television or service, internet service, newspapers, newsletters, email service, literature, or blogs;*

(d) *the operation or functioning of the legislative branch, judicial branch, clerk of court, county commission, or city or town council; or*

(e) *a right of a person to file a complaint or seek relief from a court of competent jurisdiction;*

(6) *suspend an election law or prohibit, limit, or curtail a regularly scheduled election;*

(7) *prohibit, regulate, or curtail the otherwise lawful possession, carrying, sale, transportation, transfer, defensive use, or other lawful use of:*

(a) *a firearm, including a component or accessory;*

(b) *ammunition, including any component or accessory;*

(c) *ammunition-reloading equipment and supplies; or*

(d) *a personal weapon other than a firearm;*

(8) *seize, commandeer, or confiscate in any manner:*

(a) *a firearm, including any component or accessory;*

(b) *ammunition, including a component or accessory;*

(c) *ammunition-reloading equipment and supplies; or*

(d) *a personal weapon other than a firearm;*

(9) *suspend or revoke a permit to carry a concealed pistol issued pursuant to Title 45, chapter 8, except as expressly authorized in that chapter;*

(10) *refuse to accept an application for a permit to carry a concealed weapon, provided the application has been properly completed in accordance with Title 45, chapter 8;*

(11) *close or limit the operating hours of an entity engaged in the lawful selling or servicing of a firearm, including:*

- (a) *a component or accessory;*
- (b) *ammunition, including a component or accessory;*
- (c) *ammunition-reloading equipment and supplies; or*
- (d) *a personal weapon other than a firearm, unless the closing or limitation of hours applies equally to all forms of commerce within the jurisdiction;*
- (12) *close or limit the operating hours of any indoor or outdoor shooting range; or*
- (13) *place restrictions or quantity limitations on an entity regarding the lawful sale or servicing of:*
  - (a) *a firearm, including a component or accessory;*
  - (b) *ammunition, including a component or accessory;*
  - (c) *ammunition-reloading equipment and supplies; or*
  - (d) *a personal weapon other than a firearm.”*

**Section 3. Claims or defense against state action – remedies – limitations.** (1) A person or entity may assert a violation of 10-3-101 or 10-3-102 as a claim against a state, local, or interjurisdictional agency or public official in any judicial or administrative proceeding or as a defense in any judicial proceeding.

(2) In any civil action based on this section, the court may grant:

- (a) declaratory relief;
- (b) injunctive relief;
- (c) compensatory damages for pecuniary and nonpecuniary losses;
- (d) reasonable attorney fees and costs; and
- (e) any other appropriate relief.

(3) A person or entity may not bring an action to assert a claim under this section later than 2 years after the date that it knew or could have known that a violation occurred.

**Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [section 3].

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

Approved April 30, 2021

## CHAPTER NO. 347

[HB 574]

AN ACT REVISING THE REQUIREMENTS FOR REPORTS ON THE OUT-OF-STATE PLACEMENT OF HIGH-RISK CHILDREN WITH MULTIAGENCY NEEDS; AMENDING SECTION 52-2-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 52-2-311, MCA, is amended to read:

**“52-2-311. Out-of-state placement monitoring and reporting.**

(1) The department shall collect the following information regarding high-risk children with multiagency service needs:

- (a) the number of children placed out of state;
- (b) the reasons each child was placed out of state;
- (c) the costs for each child placed out of state;
- (d) the process used to avoid out-of-state placements; ~~and~~
- (e) the number of in-state providers participating in the pool; *and*
- (f) *the location of the facilities in which the children were placed.*

(2) For children whose placement is funded in whole or in part by medicaid, the report must include information indicating other department programs with which the child is involved.

(3) On an ongoing basis, the department shall attempt to reduce out-of-state placements.

(4) The department shall report ~~biannually~~ *in accordance with 5-11-210*, to the children, families, health, and human services interim committee *no later than August 30 each year* concerning the information it has collected under this section and the results of the efforts it has made to reduce out-of-state placements. *The report must cover placements made during the most recently completed fiscal year.*"

**Section 2. Effective date.** [This act] is effective July 1, 2021.

Approved April 29, 2021

## CHAPTER NO. 348

[HB 67]

AN ACT GENERALLY REVISING COMMUNITY COLLEGE FUNDING LAWS; ESTABLISHING A BASE PLUS FORMULA THAT IS ADJUSTED FOR ACTUAL FTE IN WEIGHTED CATEGORIES TO BE USED BEGINNING WITH THE 2025 BIENNIUM; PROVIDING DEFINITIONS; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT AND PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-142, 17-7-502, 20-15-309, 20-15-310, AND 20-15-312, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1.** Section 17-7-142, MCA, is amended to read:

**"17-7-142. Calculation of reversions for funded resident enrollment growth in Montana university system and community colleges.**

(1) The reversion calculation in this section is effective only in those years when the legislature funds resident enrollment growth based ~~upon~~ *on* resident enrollment projections and requires a reversion by the Montana university system ~~or a community college~~ if the resident enrollment projections are not met.

(2) The reversion must be calculated based ~~upon~~ *on* the marginal funding for each resident FTE identified in the general appropriations act.

(3) The total reversion is calculated based ~~upon~~ *on* the difference between the FTE resident enrollment projection and the actual FTE resident enrollment or the FTE resident enrollment projection and the prior 3-year average FTE resident enrollment, whichever is lower."

**Section 2.** Section 17-7-142, MCA, is amended to read:

**"17-7-142. Calculation of reversions and fees for funded resident enrollment growth in Montana university system and community colleges.** (1) The reversion calculation in this section is effective only in those years when the legislature funds resident enrollment growth based ~~upon~~ *on*

resident enrollment projections and requires a reversion by the Montana university system or a community college if the resident enrollment projections are not met.

(2) The reversion must be calculated based ~~upon~~ *on* the marginal funding for each resident FTE identified in the general appropriations act.

(3) The total reversion is calculated based ~~upon~~ *on* the difference between the FTE resident enrollment projection and the actual FTE resident enrollment

or the FTE resident enrollment projection and the prior 3-year average FTE resident enrollment, whichever is lower.

(4) *For a community college, any difference calculated under subsection (3) must be paid as a fee to the community college FTE adjustment account established in [section 6].*

**Section 3.** 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; 5-13-404; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 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; 20-9-905; [section 6]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-151; 76-13-150; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-6-331; 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 contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116

and 22-3-117 terminates June 30, 2025; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; and pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023.)”

**Section 4.** Section 20-15-309, MCA, is amended to read:

**“20-15-309. Proposed budget Biennial budgeting.** The board of trustees of a community college district shall submit a ~~proposed budget enrollment projections and other data necessary for calculating the state appropriation under 20-15-310~~ to the board of regents by August 15 1 immediately preceding each regular legislative session. ~~The proposed budget shall be for the next biennium and in a form approved by the state budget director and the commissioner of higher education and shall be calculated in the same manner as the operating budget described in 20-15-312. The board of regents shall review the proposed budget and all its components and make any changes it determines necessary.~~ By the following September 1, the board of regents shall submit its proposal for funding the community colleges to the budget director and the legislative fiscal analyst.”

**Section 5.** Section 20-15-310, MCA, is amended to read:

**“20-15-310. Appropriation – definitions.** (1) *As used in [section 6] and this section, the following definitions apply:*

(a) *“Adjusted base” means the state appropriation to a community college in the base year minus any one-time-only legislative appropriations, except for one-time-only legislative appropriations made for fiscal year 2022, and appropriations for auditing purposes, as well as any reversion pursuant to 17-7-142 before July 1, 2023, and adjusted for actual weighted FTE as determined by the commissioner of higher education in [section 6(2)], then multiplied by the inflationary factor for the second year of the current biennium.*

(b) *“Base year” means the first year of the current biennium.*

(c) *“Concurrent enrollment” means the form of dual enrollment through which a high school student receives instruction in a community college course from a high school instructor.*

(d) *“CTE FTE” means the FTE derived from students in courses determined by the commissioner of higher education to be career and technical education, based on national standard course classifications. For the purposes of the community college funding formula, FTE generated from a dual enrollment CTE course must be included in the calculation of CTE FTE and not in the concurrent enrollment or early college FTE categories.*

(e) *“Dual enrollment” means the circumstance in which a high school student is enrolled in both the student’s high school and in a community college.*

(f) "Early college" means the form of dual enrollment through which a high school student receives instruction in a community college course from a faculty member of the community college.

(g) "FTE" or "full-time equivalent" means the total number of undergraduate resident student credit hours in an academic year divided by 30.

(h) "FTE categories" means CTE FTE, general education FTE, the FTE derived from concurrent enrollment, and the FTE derived from early college. For the purposes of the community college funding formula, FTE generated from a dual enrollment CTE course must be included in the calculation of CTE FTE and not in the concurrent enrollment or early college FTE categories.

(i) "FTE decrease funding factor" means a dollar figure for each year of the ensuing biennium that is determined by the legislature and must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(j) "FTE increase funding factor" means a dollar figure for each year of the ensuing biennium that is determined by the legislature and must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(k) "FTE weighting factor" means a multiplier that is applied to changes in resident FTE in each of the FTE categories and that is determined by the legislature and must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(l) "General education FTE" means the FTE derived from non-dual-enrollment students in courses determined by the commissioner of higher education to not be career and technical education, based on national standard course classifications.

(m) "Inflationary factor" means the percentage calculated pursuant to 20-9-326, not to exceed 3% and subject to final determination by the legislature as specified in the appropriations act appropriating funds to the community colleges for each biennium.

(n) "Weighted FTE" means the sum of the FTE in each FTE category multiplied by the corresponding FTE weighting factor.

(1)(2) It is the intent of the legislature that all community college spending, other than from restricted funds, designated funds, or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act.

(2)(3) (a) The state general fund appropriation for each community college must be determined as follows:

(a) For the first year of the next biennium, multiply the adjusted base by the inflationary factor for the first year of the next biennium, and to this number add the result of multiplying:

(i) any change in the projected weighted resident FTE changes for the first year of the next biennium from the actual weighted resident FTE in the base year; and

(ii) the FTE decrease funding factor or the FTE increase funding factor as appropriate for the first year of the next biennium.

(b) For the second year of the next biennium, multiply the adjusted base by the inflationary factor for the first year of the next biennium, multiply this result by the inflationary factor for the second year of the next biennium, and to this number add the result of multiplying:

(i) any change in the projected weighted resident FTE changes for the second year of the next biennium from the actual weighted resident FTE in the base year; and

(ii) *the FTE decrease funding factor or the FTE increase funding factor as appropriate for the second year of the next biennium.*

~~(i) multiply the variable cost of education per student by the full-time equivalent student count and add the budget amount for the fixed cost of education; and~~

~~(ii) multiply the total in subsection (2)(a)(i) by the state share.~~

~~(b) The variable cost of education per student, the budget amount for fixed costs, and the state share for each community college must be determined by the legislature. The state share for each community college, expressed as a percentage, and the variable cost of education per student must be specified in the appropriations act appropriating funds to the community colleges for each biennium.~~

~~(3) Except as provided in subsection (4), the state general fund appropriation for each full-time equivalent resident student at a community college may not exceed the weighted average of state support per resident full-time equivalent student among community colleges and 2-year and 4-year campuses of the Montana university system in the most recent year plus an amount equal to two standard deviations of the most recent 6 years of weighted averages of state support per resident full-time equivalent student among community colleges and 2-year and 4-year campuses of the Montana university system.~~

~~(4) If enrollment for a community college is less than 200 full-time equivalent resident students for 2 consecutive fiscal years, the maximum state general fund appropriation in the subsequent fiscal year for that community college may not exceed the lesser of:~~

~~(a) the weighted average of state support per resident full-time equivalent student within the Montana university system; or~~

~~(b) the weighted average of state support per resident full-time equivalent student within the community college system.~~

~~(5) At any time enrollment at a community college falls below 200 full-time equivalent resident students, the community college shall submit a business plan to the board of regents for review, approval, and monitoring. The business plan must include identifying what measures the community college will take to increase enrollment. The plan must be submitted to the board of regents within 1 month after enrollment falls below 200 full-time equivalent resident students.~~

~~(6) The student count may not include those enrolled in community service courses as defined by the board of regents.~~

~~(7) As used in this section, the following definitions apply:~~

~~(a) "Adjusted cost of education" means the cost of education minus any reversion calculated under 17-7-142, expenditures from one-time-only legislative appropriations, and expenditures funded by local mill levies provided for in 2-9-212 and 20-9-501 in excess of the 2012 mill levy levels.~~

~~(b) "Cost of education" means the actual costs incurred by the community colleges during the budget base fiscal year, as reported on the current unrestricted operating fund schedule that is statutorily required to be submitted to the board of regents.~~

~~(c) "Fixed cost of education" means that portion of the adjusted cost of education, as determined by the legislature, that is not influenced by increases or decreases in student enrollment.~~

~~(d) "Variable cost of education per student" means that portion of the adjusted cost of education, as determined by the legislature, that is subject to change as a result of increases or decreases in student enrollment, divided by the actual student enrollment during the budget base fiscal year."~~

**Section 6. Adjustments based on actual weighted FTE – special revenue account – statutory appropriation.** (1) There is a community college FTE adjustment account in the state special revenue fund provided for in 17-2-102. The account is statutorily appropriated, as provided in 17-7-502, to the commissioner of higher education for the purposes described in this section.

(2) Beginning at the end of fiscal year 2024, at the end of each fiscal year the commissioner of higher education, utilizing the FTE decrease funding factor and the FTE increase funding factor as appropriate, shall determine the fiscal impacts resulting from the weighted FTE projections on which that fiscal year's state appropriation to a community college was based, pursuant to 20-15-310, and the fiscal impacts that would have resulted had the actual weighted FTE for that fiscal year been used to determine that fiscal year's state appropriation and shall determine any overpayment or underpayment to the community college for that fiscal year.

(3) At the end of each odd fiscal year, the commissioner shall calculate the net underpayment or overpayment resulting from the underpayment or overpayment of the prior fiscal year and current fiscal year determined under subsection (2) and:

(a) the commissioner shall distribute any net underpayment determined under this subsection (3) to a community college from the community college FTE adjustment account by October 15 of the current calendar year; or

(b) a community college receiving a net overpayment determined under this subsection (3) shall pay a fee equal to the overpayment to the commissioner by October 15 of the current calendar year for deposit in the community college FTE adjustment account.

**Section 7.** Section 20-15-312, MCA, is amended to read:

**“20-15-312. Calculation and approval of operating budget.**

(1) Annually by September 1, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college must be financed in the following manner:

(a) The general fund appropriation must be determined pursuant to 20-15-310.

(b) ~~The mandatory levy amount must represent a specific percentage of the combined total of the fixed cost of education and the variable cost of education, as those terms are defined in 20-15-310, and as determined by the legislature. This percentage must be specified as a percentage of the operating budget for each community college by the board of trustees of the district and approved by the board of regents.~~

(c) The funding obtained pursuant to subsections (1)(a) and (1)(b) plus the revenue derived from tuition and fee schedules approved by the board of regents and unrestricted income from any other source is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget must be submitted to the board of regents for their review and approval.

(d) The amount estimated to be raised by the voted levy must be detailed separately in an expenditure schedule.

(e) The spending of each restricted or designated funding source must be detailed separately in an expenditure schedule.

(f) The expenditure schedules provided in subsections (1)(c) through (1)(e) represent the total operating budget of the community college.

(2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. The

board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents.”

**Section 8. Transition.** The legislature intends that fiscal years 2022 and 2023 be governed by the current community college funding formula and that revisions to the formula in [this act] be used in the appropriations process for fiscal year 2024 and thereafter. For the 2025 biennium and each subsequent biennium, the community colleges shall provide FTE projections and other necessary data in order to implement the changes to the funding formula as described in 20-15-309, 20-15-310, and [section 6].

**Section 9. Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 20, chapter 15, part 3, and the provisions of Title 20, chapter 15, part 3, apply to [section 6].

**Section 10. Effective dates – applicability.** (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 2021.

(2) [Sections 1 and 7] are effective July 1, 2023.

(3) [Section 6] is effective January 1, 2023, and applies to community college appropriations and budgets for fiscal years beginning on or after July 1, 2023.

**Section 11. Termination.** [Section 2] terminates June 30, 2023.

Approved April 30, 2021

## CHAPTER NO. 349

[HB 129]

AN ACT GENERALLY REVISING THE FAMILY EDUCATION SAVINGS ACT; REVISING QUALIFYING EXPENDITURES TO INCLUDE ANY EXPENSES PERMITTED UNDER SECTION 529 OF THE INTERNAL REVENUE CODE; REVISING PROGRAM REQUIREMENTS; REVISING THE DUTIES OF THE BOARD OF REGENTS IN ADMINISTERING THE FAMILY EDUCATION SAVINGS PROGRAM; REVISING DEFINITIONS; AMENDING SECTIONS 15-30-2110, 15-62-102, 15-62-103, 15-62-201, 15-62-202, 15-62-203, 15-62-206, 15-62-208, 15-62-301, AND 20-25-902, MCA; REPEALING SECTION 15-62-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 15-30-2110, MCA, is amended to read:

“**15-30-2110. Adjusted gross income.** (1) Subject to subsection (15), 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 as determined under subsection (16);

(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), 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) and subject to subsection (17), the first \$4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (17), 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 \$33,910 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 \$33,910 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, including a medical care savings account inherited by an immediate family member as provided in 15-61-202(6);

(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 or earnings withdrawn from a family education savings account ~~established under the Montana family education savings program, Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii); or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii)~~, 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 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, 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 15-30-2602.

(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;

(r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163;

(s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104; and

(t) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1.

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) 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) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer’s business deductions:

(i) 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; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) 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) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii); or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), 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 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.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state 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 to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner 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.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(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 (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(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.

(14) A taxpayer may exclude the amount of loan repayment assistance received during the tax year pursuant to Title 20, chapter 4, part 5, not to exceed \$5,000, from the taxpayer's adjusted gross income.

(15) 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.

(16) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

(a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

(b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

(c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

(17) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (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; subsection (2)(s) terminates December 31, 2023--sec. 33, Ch. 457, L. 2015; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017.)

**Section 2.** Section 15-62-102, MCA, is amended to read:

**"15-62-102. Purpose Family education savings program established – legislative intent – purpose.** (1) *There is a family education savings program administered by the board of regents of higher education. The program may consist of one or more qualified tuition programs at the discretion of the board.*

(2) *It is the intent of the legislature to establish the Family Education Savings Act in recognition that the general welfare and well-being of the state of Montana are directly related to the educational levels and skills of its citizens. A vital and valid public purpose of the state of Montana is served by the establishment and implementation of a program that will encourage and make possible the attainment of an accessible, affordable postsecondary education by the greatest number of citizens through a savings program.*

(2) ~~*The legislature further intends that the board achieve this purpose most effectively through a public-private partnership using selected financial institutions to serve as depositories for individuals' postsecondary education savings accounts.*~~

**Section 3.** Section 15-62-103, MCA, is amended to read:

**“15-62-103. Definitions.** As used in this chapter, the following definitions apply:

(1) “Account” means an individual ~~participating trust~~ account established under this chapter.

(2) “Account owner” means the person who enters into a ~~participating trust participation~~ agreement and ~~who is designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the~~ *establishes an account on behalf of a* designated beneficiary.

(3) “Board” means the board of regents of higher education established by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(4) “Committee” means the family education savings program oversight committee established in 20-25-901.

(5) “Contributor” means a person who makes a contribution to an account for the benefit of a designated beneficiary.

(6) “Designated beneficiary” means, with respect to an account, the person designated at the time that the account is opened as the person whose ~~higher~~ education expenses are expected to be paid from the account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated beneficiary.

(7) “*Education expense*” means expenses for tuition, fees, books, supplies, equipment required for an education program, principal or interest on any qualified education loan, and any other typical education expense associated with an education program up the maximum amount allowable under section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended.

~~(7)~~(8) “Financial institution” means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment ~~adviser~~ *company*, or other similar entity that is authorized to do business in this state.

~~(8)~~(9) “Higher education institution” means an eligible educational institution as defined in section ~~529(e)(5)~~ of the Internal Revenue Code, 26 U.S.C. ~~529(e)(5)~~.

~~(9)~~(10) “Investment products” means, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

~~(10)~~(11) “Member of the family” means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section ~~529(e)(2)~~ of the Internal Revenue Code, 26 U.S.C. ~~529(e)(2)~~.

~~(11)~~(12) “Nonqualified withdrawal” means a withdrawal from an account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or

(d) a rollover or change of designated beneficiary described in 15-62-202.

~~(12)~~(13) “~~Participating trust~~ *Participation* agreement” means an agreement between the board, as trustee and as administrator of the program, and the account owner that creates a trust interest in the trust and provides for participation in the program.

~~(14)~~(14) "Program" means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.

~~(14)~~(15) "Qualified higher education expenses" means ~~qualified higher education expenses as defined in any education expense permitted by section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).~~

(16) "Qualified tuition program" means a qualified tuition program as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529.

~~(15)~~(17) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

~~(16)~~(18) "Trust" means the family education savings trust established by 15-62-301.

~~(17)~~(19) "Trust interest" means an account owner's interest in the trust created by a participation agreement and held for the benefit of a designated beneficiary "Trustee" means the board in its capacity as trustee of the trust.

~~(18)~~(20) "Trust interest" means an account owner's interest in the trust created by a participating trust agreement and held for the benefit of a designated beneficiary. "Trustee" means the board in its capacity as trustee of the trust."

**Section 4.** Section 15-62-201, MCA, is amended to read:

**"15-62-201. Program requirements -- application -- establishment of account -- qualified and nonqualified withdrawal -- penalties.** (1) *The program must be established in the form determined by the board and may be divided into multiple investment portfolios.*

(2) *If the program is divided into multiple portfolios as provided in subsection (1), the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular portfolio must be enforceable against the assets of that portfolio only and not against the assets of the program generally, if:*

(a) *distinct records are maintained for each portfolio; and*

(b) *the assets associated with each portfolio are accounted for separately from the other assets of the program.*

~~(1)~~(3) The program must be operated through use of accounts in the trust established by account owners. ~~Payments~~ *Contributions* to the trust for participation in the program must be made by account owners pursuant to ~~participating trust participation~~ *participation* agreements and ~~may be made only in cash or a cash equivalent.~~ A person who wishes to participate in the program and open an account into which funds will be deposited to pay the qualified higher education expenses of a designated beneficiary *in the program* shall:

(a) enter into a ~~participating trust participation~~ *participation* agreement pursuant to which an account will be established as a participating trust of *under* the trust; and

~~(b) complete an application on the form prescribed by the board that includes:~~

~~(i) the name, address, and social security number or employer identification number of the contributor;~~

~~(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;~~

~~(iii) the name, address, and social security number of the designated beneficiary;~~

~~(iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902;~~

(v) the designation of the financial institution with which the funds in the participating trust will be invested; and

(vi) any other information required by the board;

(c) pay the one-time application fee established by the board;

(d)(b) make the minimum contribution required by the board or by opening an account; and

(e) designate the type of account to be opened if more than one type of account is offered.

(2) A person shall make contributions to an opened account in cash.

(3) An account owner may withdraw all or part of the balance from an account under rules prescribed by the board. The rules must be used to help the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal to the extent that the board concludes that it is necessary for the board or program manager to make that determination. The rules may require that:

(a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(b) qualified withdrawals from an account be made only by a check payable jointly to the designated beneficiary and a higher education institution; and

(c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of penalties directly from the board.

(4) If the board determines that it is required to impose a penalty on nonqualified withdrawals for the program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529. The penalty must be withheld and paid to the board for use in operating and marketing the program and for state student financial aid.

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

(a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529; or

(b) the penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any costs not previously recovered.

(7) If an account owner makes a nonqualified withdrawal and a penalty imposed under subsection (4) is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

~~(a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal and state income tax return for the taxable year of the withdrawal; or~~

~~(b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for federal and state income tax returns, including any authorized extensions.~~

~~(8) Each account must be maintained separately from each other account under the program.~~

~~(9)(4) Separate records and accounting must be maintained for each account for each designated beneficiary.~~

~~(10)(5) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to any account or the earnings generated by the account in violation of section 529 of the Internal Revenue Code, 26 U.S.C. 529, and may not pledge the interest of an account or use an interest in an account as security for a loan.~~

~~(11)(6) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.~~

~~(12) The financial institution shall provide statements to each account owner whose participating trusts are invested with the institution at least once each year within 31 days after the 12-month period to which they relate. The statement must identify the contributions made during a preceding 12-month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period, and any other matters that the board requires be reported to the account owner.~~

*(7) At least annually, the board shall issue to each account holder a statement that provides a separate accounting for each qualified designated beneficiary with respect to each account providing:*

*(a) the beginning balance;*

*(b) contributions to the account;*

*(c) withdrawals from the account during the previous year; and*

*(d) ending investment account value.*

~~(13)(8) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.~~

~~(14)(9) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened."~~

**Section 5.** Section 15-62-202, MCA, is amended to read:

**"15-62-202. Changes in designated beneficiary.** (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(2) If requested by an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(3) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate:

(a) the excess contributions provisions adopted by the board pursuant to 20-25-902; or

(b) the investment choice provisions of 15-62-201(4)(5).”

**Section 6.** Section 15-62-203, MCA, is amended to read:

**“15-62-203. Selection of financial institution as program manager – contract – termination.** (1) The board shall implement the operation of the program through the use of *and may contract with* one or more financial institutions to act as the program manager to provide management services to the program, including but not limited to investment management, account administration, customer service, and marketing services. ~~Under the program, a person may submit applications for enrollment in the program and participating trust agreements to a program manager and establish accounts in the trust at the location of or through the program manager. An account owner may deposit money in an account in the trust by paying the money to a program manager who shall accept the money as an agent for the trust. Accounts may be invested in one or more investment products approved by the board.~~

(2) The committee ~~shall~~ *may* solicit proposals from financial institutions to act as *program* managers of the program. ~~Financial institutions that submit proposals shall describe the investment products that they propose to offer through the program.~~

(3) On the recommendation of the committee, the board shall select as program managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and to this state, of:

(a) financial stability and integrity;

(b) the ~~safety~~ *quality* of the investment products being offered, ~~taking into account any insurance provided with respect to these products;~~

~~(c) the ability of the investment products to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;~~

~~(d)~~(c) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

~~(e)~~(d) *if applicable*, the financial institution’s plan for promoting the program and the investment that it is willing to make to promote the program;

~~(f)~~(e) the fees, if any, proposed to be charged to persons for maintaining accounts;

~~(g)~~(f) the minimum initial ~~deposit contribution~~ and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to *maintain accounts in the program and the ability* to accept contributions through payroll deduction plans and other ~~deposit contribution~~ plans; and

~~(h)~~(g) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the board by the account owner to cover expenses of operation of the program and any additional fee offered by the financial institution for statewide program marketing by the board.

(4) ~~The board shall enter into a contract with a financial institution or, except as provided in subsection (5), into contracts with financial institutions to serve as program managers. The contracts must provide the terms and conditions by which financial institutions, as agents of the trust, may assist in selling interests in the trust and the manner in which funds of a participating trust that are designated for investment with or through the financial institution will be invested.~~

~~(5) The board may select more than one financial institution to serve as program manager. The board may select more than one kind of investment~~

product to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment products must take into account:

(a) the requirements for qualifying as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

~~(b) differing needs of contributors regarding risk and potential return of investment instruments; and~~

~~(c) administrative costs and burdens that may be imposed as the result of the decision.~~

~~(6)(4)~~ A program manager or its subcontractor shall:

(a) take action required to keep the program in compliance with its contract or the requirements of this chapter to manage the program so that it is treated as a ~~qualified state tuition program or~~ qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare statements required by 15-62-201~~(11)(6)~~ through ~~(13)~~ (8) or file these statements on behalf of the board;

(c) compile and total information contained in statements required to be prepared under 15-62-201~~(11)(6)~~ through ~~(13)~~ (8) and provide these compilations to the board;

(d) if there is more than one program manager, provide the board with the information to assist the board in determining compliance with *rules policies* adopted by the board pursuant to 20-25-902 and to comply with any state or federal tax reporting requirements;

(e) provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract. At least once during the term of any contract, the board, its contractor, or the state agency responsible for examination oversight of the program manager shall conduct an examination to the extent needed to determine compliance with the contract.

~~(f) hold participating trusts money~~ invested by or through the financial institution in the name of and for the benefit of the trust and the account owner;

~~(g) assist the trustee with respect to prepare and file~~ any federal or tax filing requirements relating to the program and *assist the trustee* with respect to any other obligations of the trustee.

~~(7)(5)~~ A person may not circulate any description of the program, whether in writing or through the use of any media, unless the board or its designee first approves the description.

~~(8)~~ A contract executed between the board and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

~~(9)(6)~~ If the board determines not to renew the appointment of a financial institution as program manager, the board may take action consistent with the interest of the program and the accounts and in accordance with its duties as trustee of the trust. Except as provided in subsection ~~(10)~~ (7), if a contract executed between the board and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:

(a) ~~amounts held in~~ accounts previously established ~~through the efforts of the financial institution may not be terminated by the trustee or board and additional contributions may be made to those accounts during the term of the contract must remain assets of the trust;~~

(b) the funds in new accounts established after the termination may not be invested by or through the financial institution unless a new contract is executed;

~~(c) participating trusts invested by or through the financial institution must continue to be invested in the financial products in which they were invested prior to the nonrenewal unless the account owner selects a different investment product without violating 15-62-201(10); and~~

~~(d)(c)~~ the continuing role of the financial institution must be governed by rules or policies established by the board or a special contract and all services provided by the financial institution to accounts continue to be subject to the control of the board as trustee of the trust with responsibility for all accounts in the program.

~~(10)(7)~~ (a) The board may terminate a contract with a financial institution or prohibit the continued investment of funds by or through a financial institution under subsection ~~(9)~~ (6) at any time for good cause on the recommendation of the committee. If a contract is terminated or investment is prohibited pursuant to this subsection, the trustee shall take custody of account funds or assets held at that financial institution and shall seek to promptly reinvest the funds or program assets *directly in its capacity as trustee of the trust* or by or through another financial institution that is selected as a program manager by the board and into the same investment products or investment products selected by the board that are as similar as possible to the original investments.

~~(b)~~ Prior to taking the actions described in subsection (10)(a), the board shall give account owners notice of the termination and a reasonable period of time, not to exceed 30 days, to voluntarily terminate the account invested by or through the financial institution or, to the extent not prohibited by 15-62-201(10), to direct that the account be invested with or through another program manager.

~~(e)(b)~~ If the termination of a program manager causes an emergency that might lead to a loss of funds to any account owner, the board or trustee may take whatever emergency action is necessary or appropriate to prevent the loss of funds invested pursuant to this chapter. ~~After taking emergency action, the board shall provide notice and opportunity for action to account owners as provided in subsection (10)(b):~~

**Section 7.** Section 15-62-206, MCA, is amended to read:

**“15-62-206. Limitations.** (1) This chapter may not be construed to:

(a) give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(b) guarantee that a designated beneficiary will be admitted to a higher education institution *or an elementary or secondary school* or be allowed to continue enrollment at or graduate from a higher education institution *or an elementary or secondary school* located in this state after admission;

(c) establish state residency for a person merely because the person is a designated beneficiary; or

(d) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified ~~higher~~ education expenses of a designated beneficiary.

(2) This chapter does not establish any obligation of this state or any agency or instrumentality of the state to guarantee for the benefit of any account owner, contributor to an account, or designated beneficiary:

(a) the return of any amounts contributed to an account;

(b) the rate of interest or other return on any account; or

(c) the payment of interest or other return on any account.

(3) Under *rules policies* adopted by the board, each contract, application, offering or disclosure document, and any other type of document identified by the board that may be used in connection with a contribution to an account must clearly indicate that the account is not insured by the state and that the principal deposited or the investment return is not guaranteed by the state.”

**Section 8.** Section 15-62-208, MCA, is amended to read:

**“15-62-208. Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-2110(11).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor’s adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, “recapturable withdrawal” means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is ~~3 years~~ *1 year* prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section.”

**Section 9.** Section 15-62-301, MCA, is amended to read:

**“15-62-301. Family education savings trust.** (1) There is a family education savings trust that is an instrumentality of the state and that is

created for a public purpose. The trust consists of participating trusts with each participating trust corresponding to an account. The assets of one participating trust may not be commingled with the assets of any other participating trust. The assets and earnings of any participating trust may not be used to satisfy the obligations of any other participating trust. Each participating trust account represents a trust interest in the trust and includes amounts received by the program from account owners pursuant to the participating trust agreement and interest and investment income earned by the trust account.

(2) The assets of the trust consist of investments and earnings on investments of funds received by the program as deposits *contributions* to accounts and amounts transferred to the trust from accounts established prior to October 1, 2005, pursuant to subsection (3).

(3) In accordance with the instructions of the account owner, the trustee shall invest funds deposited in each participating trust *contributed to each account* in permitted investment products as provided in this chapter. The trustee or a financial institution acting as an agent of the trustee shall pay or apply funds from each participating trust *account* for qualified withdrawals, nonqualified withdrawals, penalties, and withholdings.

(4) ~~(a) After October 1, 2005, and before the mandatory transfer date specified in subsection (4)(b), each account owner must be provided with notice of the creation of the family education savings trust, the participating trust agreement, and documents describing the options and actions available to the account owner. An account owner may execute a participating trust agreement and have funds that are held by financial institutions in accounts established prior to October 1, 2005, transferred to the trust and to a participating trust corresponding to the transferor's account. Until a voluntary transfer occurs pursuant to this subsection (4)(a) or a mandatory transfer occurs pursuant to subsection (4)(b), accounts established prior to October 1, 2005, remain valid and are governed by this chapter as it read prior to October 1, 2005.~~

~~(b) On December 31, 2005, or at a later date set by the board to protect account owners from possible adverse consequences, all remaining funds or investment products that are not transferred pursuant to subsection (4)(a) and that are held by financial institutions in accounts established pursuant to this chapter prior to October 1, 2005, must be transferred to the trust. The funds or investment products must be placed in a participating trust corresponding to the account and each account owner whose account is transferred is considered to have consented to and be bound by a participating trust agreement and to the transfer of funds or investment products held in the account to a new participating trust."~~

**Section 10.** Section 20-25-902, MCA, is amended to read:

**"20-25-902. Board – powers and duties.** (1) The board shall:

(a) ~~retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts~~ *administer, manage, promote, and market the program;*

(b) seek rulings and other guidance relating to the program from the United States department of the treasury and the internal revenue service;

(c) ~~make changes to the program as required for the participants in the program to obtain the federal income tax benefits or treatment provided by~~ *administer the program in compliance with section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;*

(d) *at the board's discretion,* charge, impose, and collect administrative fees and service charges pursuant to any agreement, contract, or transaction relating to the program;

(e) *if the board determines that contracting for program management will benefit the program, select the financial institution or institutions to act as the program manager pursuant to 15-62-203;*

*(f) retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts;*

~~(f) on the recommendation of the committee, adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules must address the following:~~

~~(i) procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;~~

~~(ii)(g) adopt policies for the establishment of a maximum total balance that may be held in accounts for a designated beneficiary and for providing adequate safeguards to prevent excess contributions in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;~~

~~(iii) requirements that persons who contribute to an account certify that to the best of their knowledge, the balance in all qualified state tuition programs, as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529, for the designated beneficiary does not exceed the lesser of:~~

~~(A) a maximum college savings amount established by the board; or~~

~~(B) the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;~~

~~(iv) requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section;~~

~~(g)(h) adopt procedures as necessary to implement Title 15, chapter 62, including applications for participation in the program;~~

~~(h)(i) serve as trustee of the family education savings trust established in 15-62-301;~~

~~(i)(j) enter into participating trust participation agreements with account owners; and~~

~~(j)(k) maintain the program on behalf of the state as required by section 529 of the Internal Revenue Code, 26 U.S.C. 529.~~

~~(2) The definitions in 15-62-103 apply to this section."~~

**Section 11. Repealer.** The following sections of the Montana Code Annotated are repealed:

15-62-302. Temporary savings account program.

**Section 12. Effective date.** [This act] is effective on passage and approval.

**Section 13. Applicability.** [This act] applies to tax years beginning after December 31, 2020.

Approved April 30, 2021

## CHAPTER NO. 350

[HB 146]

AN ACT REQUIRING THE OFFICE OF BUDGET AND PROGRAM PLANNING TO REPORT ON ACTUAL COSTS OF CERTAIN LEGISLATION WITH PROJECTED FISCAL IMPACT OF OVER \$1 MILLION TO THE GENERAL FUND IN A FISCAL YEAR; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Report of actual costs for legislation with projected fiscal impact.** (1) Except for the general appropriations act and any bill exempted by the legislature, for each bill with an estimated expenditure amount of over \$1 million from the general fund in any 1 of the 4 fiscal years identified in the bill's fiscal note, or as required in the bill, that is passed and approved for which a fiscal note is prepared and presented to the legislature, the office of budget and program planning shall prepare and present an annual report to the legislative finance committee by October 1 of each year. The report must include the following information:

- (a) the name of the bill;
- (b) the actual expenditures incurred based on the bill as enacted for the past entire fiscal year and a description of how the funds were expended; and
- (c) a comparison to the projected costs of the bill as projected in the fiscal note for that same fiscal year.

(2) The report to the legislature must include bills that qualify under subsection (1) for which a fiscal note was prepared which have been in effect for at least 1 fiscal year. The bill must be included in the report for each year a cost was projected in a corresponding fiscal note.

(3) The report must be provided in an electronic format.

(4) The report must also be submitted to the legislature as provided in 5-11-210.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 5, chapter 4, part 2, and the provisions of Title 5, chapter 4, part 2, apply to [section 1].

**Section 3. Coordination instruction.** If both [this act] and [LC 301] are passed and approved, reference to the report provided for in [section 1] must be included in [section 1] of [LC 301].

**Section 4. Effective date.** [This act] is effective July 1, 2021.

**Section 5. Applicability.** [This act] applies to eligible bills beginning in fiscal year 2022, and the first report is due October 1, 2022.

**Section 6. Termination.** [This act] terminates December 31, 2025.

Approved April 30, 2021

## CHAPTER NO. 351

[HB 179]

AN ACT GENERALLY REVISING LAWS RELATED TO COMMUNITY COLLEGES; CLARIFYING THE PROCEDURE FOR THE ORGANIZATION OF AND FUNDING FOR A NEW COMMUNITY COLLEGE DISTRICT; REVISING THE ELECTION PROCEDURE FOR THE ORGANIZATION OF A NEW COMMUNITY COLLEGE DISTRICT; REVISING AND CLARIFYING THE FUNDING SOURCES AND ACCOUNTING STRUCTURE FOR COMMUNITY COLLEGES; CONSOLIDATING VARIOUS EXISTING PROPERTY TAX LEVIES INTO ONE OPERATING LEVY FOR A NEW COMMUNITY COLLEGE DISTRICT; REVISING DEFINITIONS; AMENDING SECTIONS 2-9-212, 17-7-102, 19-20-605, 20-7-702, 20-7-704, 20-7-705, 20-9-134, 20-15-103, 20-15-105, 20-15-201, 20-15-202, 20-15-203, 20-15-204, 20-15-208, 20-15-209, 20-15-305, 20-15-309, 20-15-310, 20-15-311, 20-15-312, 20-15-313, AND 20-15-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Funding for new community college district – state appropriation.** (1) The board of trustees of a newly created community college district shall, by August 1 immediately preceding the regular legislative session at which the district will first seek a state appropriation, submit to the board of regents enrollment projections for each year of the ensuing biennium and an annual budget pursuant to 20-15-312 for the first year of the ensuing biennium.

(2) The state general fund appropriation for the district must be determined as follows:

(a) for the first year of the ensuing biennium:

(i) divide the total state appropriation minus any reversions calculated under 17-7-142 and any one-time-only appropriations of all community colleges in the budget base fiscal year by the total number of full-time equivalent resident students of all community colleges in the budget base fiscal year; and

(ii) multiply the result of subsection (2)(a)(i) by the projected number of full-time equivalent resident students of the new community college for the first year of the ensuing biennium.

(b) for the second year of the ensuing biennium multiply the amount calculated in subsection (2)(a)(i) by the projected number of full-time equivalent resident students of the new community college for the second year of the ensuing biennium.

(3) After each fiscal year of the first biennium the new community college district receives a state appropriation, the commissioner of higher education shall determine the fiscal impacts that would have resulted had the actual number of full-time equivalent resident students for that fiscal year been used to determine that fiscal year's state appropriation and determine any overpayment to the community college for that fiscal year. An overpayment determined under this subsection must revert to the state in the same manner of reversions calculated under 17-7-142.

(4) After the first biennium a new community college district receives a state appropriation, the state appropriation for the district in subsequent bienniums must be determined as described in 20-15-310.

**Section 2. Operating levy for community college districts created on or after January 1, 2021.** (1) This section applies only to community college districts created on or after January 1, 2021. The legislature intends that a newly created community college district have a single unified operating district levy to support the district's current fund.

(2) Subject to 15-10-420, a community college district may impose an operating levy to support the district's current unrestricted subfund under the provisions of this section.

(3) A newly created community college district may impose an operating levy under this section only after voter approval for a new mill levy as described in 15-10-425.

(4) A community college district may exceed the mill levy limit under 15-10-420 for the operating levy only after voter approval for increasing a mill levy as described in 15-10-425.

**Section 3.** Section 2-9-212, MCA, is amended to read:

**“2-9-212. Political subdivision tax levy to pay contributions.**

(1) Subject to 15-10-420 and subsection (2) of this section, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the contribution for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5). *For the*

*purposes of this section, "political subdivision" includes a community college district created prior to January 1, 2021.*

(2) (a) If a political subdivision makes contributions for group benefits under 2-18-703, the amount in excess of the base contribution as determined under 2-18-703(4)(c) for group benefits under 2-18-703 is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a).

(i) Contributions for group benefits paid wholly or in part from user charges generated by proprietary funds, as defined by generally accepted accounting principles, are not included in the amount exempted from the mill levy calculation limitation provided for in 15-10-420.

(ii) If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.

(b) Each year prior to implementing a levy under subsection (2)(a), after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.

(c) A levy under this section in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a levy under this section decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).

(3) (a) For the purposes of this section, "group benefits" means group hospitalization, health, medical, surgical, life, and other similar and related group benefits provided to officers and employees of political subdivisions, including flexible spending account benefits and payments in lieu of group benefits.

(b) The term does not include casualty insurance as defined in 33-1-206, marine insurance as authorized in 33-1-209 and 33-1-221 through 33-1-229, property insurance as defined in 33-1-210, surety insurance as defined in 33-1-211, and title insurance as defined in 33-1-212."

**Section 4.** Section 17-7-102, MCA, is amended to read:

**"17-7-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(b) The term does not include:

(i) funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met;

(ii) funding for petroleum storage tank leak prevention if the accountability benchmarks in 75-11-521 are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Budget stabilization reserve" means the amount of unappropriated fund balance in the budget stabilization reserve fund up to 4.5% of all general fund appropriations in the second year of the biennium.

(7) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(8) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(9) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(10) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(11) "Operating reserve" means an amount equal to 8.3% of all general fund appropriations in the second year of the biennium.

(12) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(13) "Program" means a principal organizational or budgetary unit within an agency.

(14) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(15) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the

forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell supervised and coordinated by the board of regents pursuant to 20-15-103. (Terminates June 30, 2028--sec. 11, Ch. 269, L. 2015.)

**17-7-102. (Effective July 1, 2028) Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Budget stabilization reserve" means the amount of unappropriated fund balance in the budget stabilization reserve fund up to 4.5% of all general fund appropriations in the second year of the biennium.

(7) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(8) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(9) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(10) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(11) "Operating reserve" means an amount equal to 8.3% of all general fund appropriations in the second year of the biennium.

(12) “Present law base” means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(13) “Program” means a principal organizational or budgetary unit within an agency.

(14) “Requesting agency” means the agency of state government that has requested a specific budget amendment.

(15) “University system unit” means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at ~~Miles City, Glendive, and Kalispell~~ supervised and coordinated by the board of regents pursuant to 20-15-103.”

**Section 5.** 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. Employer contributions to the pension accumulation account must be made as provided in 19-20-609 and 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 9.85% of total earned compensation, plus the supplemental contribution required under 19-20-609.

(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, plus the supplemental contribution required under 19-20-609.

(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, plus the supplemental contribution required under 19-20-609.

(5) (a) If the employer is a *school district or a community college district created prior to January 1, 2021* or ~~community college district~~, the trustees shall budget and pay for the employer’s contribution under the provisions of 20-9-501.

(b) *If the employer is a community college district created on or after January 1, 2021, the trustees shall budget and pay for the employer’s contribution from the district’s current unrestricted subfund.*

(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.

(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.

(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.

(9) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration."

**Section 6.** Section 20-7-702, MCA, is amended to read:

**"20-7-702. Authorization to establish adult education programs.**

The trustees of a district *or a community college district created prior to January 1, 2021, or community college district* may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, career and technical education, vocational-technical education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees."

**Section 7.** Section 20-7-704, MCA, is amended to read:

**"20-7-704. Adult education tuition and fees.** The trustees of a district *or a community college district created prior to January 1, 2021, or community college district* shall have the authority to *may* charge tuition for instruction and to charge fees for the use of equipment and materials. The amount of ~~such~~ the tuition and fees shall *must* be determined on a per-course basis or on the basis of the cost of the entire adult education program. All proceeds from tuition and fees shall *must* be deposited in the adult education fund."

**Section 8.** Section 20-7-705, MCA, is amended to read:

**"20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district *or a community college district created prior to January 1, 2021 or community college district*. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax on the taxable value of all taxable property within the district for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent

shall report the levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values and a levy on the district must be made by the county commissioners in accordance with 20-9-142.”

**Section 9.** Section 20-9-134, MCA, is amended to read:

**“20-9-134. Completion, filing, and delivery of final budgets.** After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before September 15; and

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before ~~September 1~~ *August 15.*”

**Section 10.** Section 20-15-103, MCA, is amended to read:

**“20-15-103. Supervision and coordination by board of regents.** ~~Community college districts shall be under the supervision and coordination of the regents. Pursuant to Article X, section 9, of the Montana constitution, the community college districts are assigned to the board of regents of higher education for supervision and coordination as public educational institutions outside the Montana university system.~~ The regents shall:

(1) supervise community college districts in accordance with the provisions of this section and 20-15-105;

(2) appoint a coordinator of community college districts and prescribe the duties of the coordinator;

(3) formulate and put into effect general policies for the supervision and coordination of community college districts;

(4) after consultation with the community college trustees, develop and implement policies that distinguish the regents’ authority to supervise and coordinate and the trustees’ authority to administer and control community colleges; and

(5) ~~call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with this chapter on approval of a proposition to organize a community college district, provide a recommendation to the legislature pursuant to 20-15-209.”~~

**Section 11.** Section 20-15-105, MCA, is amended to read:

**“20-15-105. Courses of instruction – tuition and fees.** (1) A community college district shall provide instruction in ~~academic, occupational, and adult transfer, career and technical, and adult postsecondary~~ education, subject to the approval of the board of regents of higher education. The board of trustees of ~~such of a community college~~ district may, in ~~their~~ *its* discretion and upon approval of the board of regents, prescribe:

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) ~~In addition thereto, such~~ *The board of trustees of a community college district may prescribe such other fees as it considers necessary to maintain courses, taking into consideration such other funds as may be available under law for the support of such courses.”*

**Section 12.** Section 20-15-201, MCA, is amended to read:

**“20-15-201. Requirements for organization of community college district.** The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

- (1) The proposed area coincides with the then-existing boundaries of contiguous elementary or *K-12* districts of one or more counties.
- (2) The taxable value of the proposed area is at least \$10 million.
- (3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area.”

**Section 13.** Section 20-15-202, MCA, is amended to read:

**“20-15-202. Petition for organization of community college district.** (1) When the area of a proposed community college district satisfies the specified requirements *under 20-15-201*, the registered electors of the area may petition the ~~regents~~ *board of county commissioners* to call an election for the organization of a community college district. ~~Such~~ *The petition shall must* be signed by at least 20% of the registered electors within each county or a part of a county included in the area of the proposed community college district.

(2) *When the area to be included within the proposed community college district lies in more than one county, the qualified electors of 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 20% of the qualified electors of the proposed district that lies within that county.*

(3) *The petition must include:*

(a) *a legal description or map of the proposed community college district boundaries;*

(b) *the proposed name of the community college district;*

(c) *a description of the educational services the proposed community college district will offer;*

(d) *an estimate of the number of persons expected to use the services within the district; and*

(e) *a notice that the creation of a community college district may, with sufficient voter approval, result in the levying of property taxes to support:*

(i) *a portion of the operating costs of the community college district; and*

(ii) *the repayment of bonds issued as authorized by law.”*

**Section 14.** Section 20-15-203, MCA, is amended to read:

**“20-15-203. ~~Call of community~~ *Community college district organization election – notice – proposition statement.* (1) ~~A petition for the organization of a community college district must be presented to the county election administrator responsible for conducting elections pursuant to 20-15-208. The county election administrator shall notify the regents of the petition and examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.~~**

(2) ~~If the county election administrator determines that the petition satisfies the requirements, the county election administrator shall notify the regents and conduct an election on the community college district organization proposition. The election must be held on the next regular school election day that, pursuant to 13-1-504(4), is not less than 85 days after the order.~~

(1) *On a determination that a petition complies with the provisions of 20-15-202, the board of county commissioners of each county in which the proposed community college district lies shall give notice of elections to be held within the boundaries of the proposed district for the purposes of:*

(a) *determining whether a community college district should be organized; and*

(b) *electing trustees as provided under the provisions of this part.*

(2) *The elections must be conducted in accordance with Title 13, chapter 1, part 5.*

(3) At the election the proposition *for organization* must be in substantially the following form:

**PROPOSITION**

Shall there be organized within the area comprising the School Districts of..... (elementary or *K-12* districts must be listed by county), State of Montana, a community college district for the offering of ~~13th- and 14th-year courses, transfer, career and technical, and adult postsecondary education~~, to be known as the Community College District of....., Montana, under the provisions of the laws authorizing community college districts in Montana, as requested in the petition filed with the county election administrator on the.... day of....., 20...? *The creation of a community college district may, with subsequent voter approval, result in the levying of property taxes to support:*

(1) *a portion of the operating costs of the community college district; and*

(2) *the repayment of bonds issued as authorized by law.*

FOR organization.

AGAINST organization.”

**Section 15.** Section 20-15-204, MCA, is amended to read:

**“20-15-204. Election of trustees – districts from which elected – terms of office.** (1) Pursuant to 20-15-208, ~~the board of regents shall call and the county election administrator shall conduct the election of trustees of the proposed community college district at the same time as the election to be held for the approval of the community college district’s organization.~~

(2) If the county election administrator determines that the proposal to organize a new community college district has carried pursuant to 20-15-209, the county election administrator shall determine which candidates have been elected trustees.

(3) Seven trustees must be elected at large, except that if there is in the proposed community college district one or more high school districts or part of a high school district within the community college district with more than 43% and not more than 50% of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three trustees and the remaining trustees must be elected at large from the remainder of the proposed community college district. Should any high school district or part of a high school district within the community college district have more than 50% of the population of the proposed district, then four trustees must be elected from that high school district or part of a high school district and the remaining trustees must be elected at large from the remainder of the proposed community college district.

(4) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes must be elected for a term of 3 years, the two receiving the next greatest number of votes, for a term of 2 years, and the two receiving the next greatest number of votes, for a term of 1 year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for 3 years, the two who shall serve for 2 years, and the two who shall serve for 1 year. Thereafter, all trustees elected shall serve for terms of 3 years each.”

**Section 16.** Section 20-15-208, MCA, is amended to read:

**“20-15-208. Conduct of community college district elections =cost.**

(1) An election for the organization of the community college district and the concurrent election of trustees for the proposed community college district

must be supervised by the board of regents acting as the governing body for the election and conducted by the county election administrator.

(2) For any community college district election held subsequent to the initial election *elections* under subsection (1), the community college district's board of trustees is the governing body for the election and the county election administrator shall conduct the election.

(3) If a proposed or existing community college district is within the boundaries of more than one county, the county election administrator of the county with the highest number of qualified electors in the proposed or existing community college district shall conduct the election.

(4) A community college district election must be conducted in accordance with Title 13, chapter 1, part 5.

~~(5) The cost of conducting an initial community college district election under subsection (1) must be paid by the university system."~~

**Section 17.** Section 20-15-209, MCA, is amended to read:

**"20-15-209. Determination of approval or disapproval of proposition – subsequent procedures if approved.** (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast. The county election administrator shall determine whether the proposal has received the majority of the votes cast for each county within the proposed district and shall certify the results to the regents. Prior to the legislative session immediately following the *an affirmative* community college district organization election;:

(a) *by August 15, the trustees-elect of the proposed community college district shall submit to the board of regents an analysis of the educational and workforce needs in the proposed community college district and planned course offerings to meet the needs; and*

(b) *by December 1, the regents shall inform the legislature of the results of the election and shall provide a recommendation to the legislature based solely on an evaluation of the analysis in subsection (1)(a).*

(2) Authority to approve a new community college district lies solely with the legislature. *The legislature shall, by joint resolution at its next regular session, consider creation of the proposed community college district. If the legislature approves a new community college district, the regents board of county commissioners of each county in which the proposed community college district is located shall make an order declaring the community college district organized and cause a copy of the order to be recorded in the office of the county clerk and recorder in each county in which a portion of the new district is located. The board of county commissioners shall notify the board of regents of the district's organization.*

~~(2)(3) Within 30 days of the date of the organization order, the regents board of trustees of the community college district shall set a date and call notice an organization meeting for the board of trustees of the community college district and shall notify the elected trustees of their membership and of the organization meeting. The notification must designate a temporary presiding officer and secretary for the purposes of organization."~~

**Section 18.** Section 20-15-305, MCA, is amended to read:

**"20-15-305. Adult education tax levy.** A community college *district created prior to January 1, 2021,* is considered a district for the purposes of adult education and under the provisions for adult education may, subject to 15-10-420, levy a tax for the support of its adult education program when the superintendent of public instruction approves the program."

**Section 19.** Section 20-15-309, MCA, is amended to read:

**“20-15-309. Proposed budget Biennial budgeting.** The board of trustees of a community college district shall submit a ~~proposed budget enrollment projections and other data necessary for calculating the state appropriation under 20-15-310~~ to the board of regents by August 15 1 immediately preceding each regular legislative session. ~~The proposed budget shall be for the next biennium and in a form approved by the state budget director and the commissioner of higher education and shall be calculated in the same manner as the operating budget described in 20-15-312. The board of regents shall review the proposed budget and all its components and make any changes it determines necessary.~~ By the following September 1, the board of regents shall submit its proposal for funding the community colleges to the budget director and the legislative fiscal analyst.”

**Section 20.** Section 20-15-310, MCA, is amended to read:

**“20-15-310. Appropriation – definitions.** (1) It is the intent of the legislature that all community college spending, other than from restricted funds, designated funds, or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act. *To be eligible for a state appropriation, a community college district created on or after January 1, 2021, must impose an operating levy pursuant to [section 2] of at least 1.5 mills.*

(2) (a) The state general fund appropriation for each community college must be determined as follows:

(i) multiply the variable cost of education per student by the *projected* full-time equivalent *resident* student count and add the budget amount for the fixed cost of education; and

(ii) multiply the total in subsection (2)(a)(i) by the state share.

(b) The variable cost of education per student, the budget amount for fixed costs, and the state share for each community college must be determined by the legislature. The state share for each community college, expressed as a percentage, and the variable cost of education per student must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(3) Except as provided in subsection (4), the state general fund appropriation for each full-time equivalent resident student at a community college may not exceed the weighted average of state support per resident full-time equivalent student among community colleges and 2-year and 4-year campuses of the Montana university system in the most recent year plus an amount equal to two standard deviations of the most recent 6 years of weighted averages of state support per resident full-time equivalent student among community colleges and 2-year and 4-year campuses of the Montana university system.

(4) If enrollment for a community college is less than 200 full-time equivalent resident students for 2 consecutive fiscal years, the maximum state general fund appropriation in the subsequent fiscal year for that community college may not exceed the lesser of:

(a) the weighted average of state support per resident full-time equivalent student within the Montana university system; or

(b) the weighted average of state support per resident full-time equivalent student within the community college system.

(5) At any time enrollment at a community college falls below 200 full-time equivalent resident students, the community college shall submit a business plan to the board of regents for review, approval, and monitoring. The business plan must include identifying what measures the community college

will take to increase enrollment. The plan must be submitted to the board of regents within 1 month after enrollment falls below 200 full-time equivalent resident students.

(6) The student count may not include those enrolled in community service courses as defined by the board of regents.

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

(a) "Adjusted cost of education" means the cost of education minus any reversion calculated under 17-7-142, expenditures from one-time-only legislative appropriations, *and, for a community college created prior to January 1, 2021, expenditures funded by local mill levies provided for in 2-9-212 and 20-9-501 in excess of the 2012 mill levy levels,* and expenditures funded by local mill levies provided for in 2-9-212 and 20-9-501 in excess of the 2012 mill levy levels.

(b) "Cost of education" means the actual costs incurred by the community colleges during the budget base fiscal year, as reported on the current unrestricted operating fund schedule that is statutorily required to be submitted to the board of regents.

(c) "Fixed cost of education" means that portion of the adjusted cost of education, as determined by the legislature, that is not influenced by increases or decreases in student enrollment.

(d) "Variable cost of education per student" means that portion of the *total* adjusted cost of education *at all Montana community colleges*, as determined by the legislature, that is subject to change as a result of increases or decreases in student enrollment, divided by the actual *total* student enrollment *at all Montana community colleges* during the budget base fiscal year."

**Section 21.** Section 20-15-311, MCA, is amended to read:

**"20-15-311. Funding sources.** (1) The annual operating current fund budget of a community college district ~~must created on or after January 1, 2021, may~~ be financed from the following sources:

~~(1)(a)~~ the estimated revenue to be realized from student tuition and fees, except revenue related to community service courses, as defined by the board of regents;

~~(2)~~ subject to 15-10-420, a mandatory mill levy on the community college district;

~~(3)~~ subject to 15-10-420, the adult education levy authorized under provisions of 20-15-305;

~~(4)(b)~~ the state general fund appropriation pursuant to 20-15-310;

~~(c)~~ the operating levy pursuant to [section 2];

~~(5)~~ an optional voted levy on the community college district that must be submitted to the electorate in accordance with general school election laws and 15-10-425;

~~(6)(d)~~ all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

~~(7)(e)~~ income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses, as defined by the board of regents, are considered restricted to a specific purpose.

~~(8)(f)~~ income from a political subdivision that is designated a community college service region under 20-15-241.

(2) *The annual current fund budget of a community college district created prior to January 1, 2021, may be financed from the following sources:*

*(a) the estimated revenue to be realized from student tuition and fees, except revenue related to community service courses, as defined by the board of regents;*

- (b) *the state general fund appropriation pursuant to 20-15-310;*
- (c) *subject to 15-10-420, a mandatory mill levy on the community college district;*
- (d) *pursuant to 20-9-501, a retirement levy;*
- (e) *pursuant to 2-9-212, a levy for employer contributions to group benefits plans;*
- (f) *subject to 15-10-420, the adult education levy authorized under 20-15-305;*
- (g) *an optional voted levy on the community college district that must be submitted to the electorate in accordance with general school election laws and 15-10-425;*
- (h) *all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;*
- (i) *income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses, as defined by the board of regents, are considered restricted to a specific purpose.*
- (j) *income from a political subdivision that is designated a community college service region under 20-15-241.”*

**Section 22.** Section 20-15-312, MCA, is amended to read:

**“20-15-312. Calculation Review and approval of annual operating budget.** (1) Annually by September ~~1~~ *August 15*, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college must be ~~financed~~ *in the following manner:*

~~(a) The general fund appropriation must be determined pursuant to 20-15-310.~~

~~(b) The mandatory levy amount must represent a specific percentage of the combined total of the fixed cost of education and the variable cost of education, as those terms are defined in 20-15-310, and as determined by the legislature. This percentage must be specified for each community college by the board of trustees of the district and approved by the board of regents.~~

~~(c) The funding obtained pursuant to subsections (1)(a) and (1)(b) plus the revenue derived from tuition and fee schedules approved by the board of regents and unrestricted income from any other source is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget must be submitted to the board of regents for their review and approval.~~

~~(d) The amount estimated to be raised by the voted levy must be detailed separately in an expenditure schedule.~~

~~(e) The spending of each restricted or designated funding source must be detailed separately in an expenditure schedule.~~

~~(f) The expenditure schedules provided in subsections (1)(c) through (1)(e) represent the total operating budget of the community college submitted in a manner prescribed by the board of regents and include at a minimum:~~

~~(a) detailed revenue and expenditure estimates for the current fiscal year and actual revenue and expenditure reports for the most recently completed fiscal year in all funds and subfunds;~~

~~(b) a list of any property tax levies for the current year, displaying the amount to be raised in dollars and mills and any applicable statutory limitations; and~~

~~(c) the percentage of the proposed current fund budget funded by local property taxes.~~

(2) The board of regents shall review *and approve* the proposed total operating budget and all its components ~~and make any changes it determines~~

necessary, ensuring the proposed budget complies with applicable laws and accounting standards. The board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents.”

**Section 23.** Section 20-15-313, MCA, is amended to read:

**“20-15-313. Tax levy.** (1) By the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values, the board of county commissioners of any county where a community college district is located shall, ~~subject to 15-10-420;~~ fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by 20-15-312(1)(b) and the voted levy prescribed by 20-15-311(5) if one has been approved by the voters, *subject to statutory conditions and limitations, any district levy authorized by law.*

(2) When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.”

**Section 24.** Section 20-15-321, MCA, is amended to read:

**“20-15-321. General fund Current unrestricted subfund cash reserve.** At the end of each school fiscal year the board of trustees of a community college district may designate a portion of the ~~general fund current unrestricted subfund~~ end-of-the-year cash balance as a cash reserve for the purpose of paying ~~general fund current unrestricted subfund~~ warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. The amount of the ~~general fund current unrestricted subfund~~ cash balance that is earmarked as cash reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.”

**Section 25. Transition.** For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021.

**Section 26. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 15, part 3, and the provisions of Title 20, chapter 15, part 3, apply to [sections 1 and 2].

**Section 27. Coordination instruction.** (1) If both House Bill No. 67 and [this act] are passed and approved and House Bill No. 67 includes a section that amends 20-15-310, then [section 20 of this act], amending 20-15-310, is void.

(2) If both House Bill No. 67 and [this act] are passed and approved and House Bill No. 67 includes a section that amends 20-15-312, then the section of House Bill No. 67 amending 20-15-312 is void.

(3) If both House Bill No. 67 and [this act] are passed and approved and House Bill No. 67 includes a section that amends 20-15-310, then [section 1 of this act] is void and must be replaced with:

**“NEW SECTION. Section 1. Funding for a new community college district.** (1) The board of trustees of a newly created community college district shall, by August 1 immediately preceding the regular legislative session at which the district will first seek a state appropriation, submit to the board of regents enrollment projections for each year of the ensuing biennium and an annual budget pursuant to 20-15-312 for the first year of the ensuing biennium.

(2) The state general fund appropriation for the district must be determined as follows:

(a) for the first year of the ensuing biennium:

(i) divide the total adjusted base of all community colleges by the total FTE of all community colleges in the base year;

(ii) multiply the result of subsection (2)(a)(i) by the inflationary factor for the second year of the current biennium and then multiply by the inflationary factor for the first year of the ensuing biennium; and

(iii) multiply the result of subsection (2)(a)(ii) by the projected weighted resident FTE of the new community college for the first year of the ensuing biennium.

(b) for the second year of the ensuing biennium:

(i) multiply the number calculated in subsection (2)(a)(ii) by the inflationary factor for the second year of the ensuing biennium; and

(ii) multiply the result of subsection (2)(b)(i) by the projected weighted resident FTE of the new community college for the second year of the ensuing biennium.

(3) (a) After each fiscal year of the first biennium the new community college district receives a state appropriation, the commissioner of higher education shall determine the fiscal impacts that would have resulted had the actual FTE for that fiscal year been used to determine that fiscal year's state appropriation and determine any overpayment or underpayment to the community college for that fiscal year.

(b) At the end of each odd fiscal year, the commissioner shall calculate the net underpayment or overpayment resulting from the underpayment or overpayment of the prior fiscal year and current fiscal year determined under subsection (2) and:

(i) the commissioner shall distribute any net underpayment determined under this subsection (3) to a community college from the community college FTE adjustment account by October 15 of the current calendar year; or

(ii) a community college receiving a net overpayment determined under this subsection (3) shall pay a fee equal to the overpayment to the commissioner by October 15 of the current calendar year for deposit in the community college FTE adjustment account.

(4) After the first biennium a new community college district receives a state appropriation, the state appropriation for the district in subsequent biennia must be determined as described in 20-15-310."

**Section 28. Effective date.** [This act] is effective July 1, 2021.

Approved April 30, 2021

## CHAPTER NO. 352

[HB 229]

AN ACT PROHIBITING QUALIFIED HEALTH INSURANCE PLANS OFFERED THROUGH A HEALTH INSURANCE EXCHANGE IN MONTANA FROM COVERING ABORTION SERVICES.

WHEREAS, under Public Law 111-148, the Patient Protection and Affordable Care Act, federal tax dollars are routed to exchange-participating health insurance plans through affordability credits provided to individuals with incomes of up to 400% of the federal poverty level to assist the individuals with purchasing health insurance coverage, including health insurance plans that provide coverage for abortions; and

WHEREAS, federal funding of insurance plans that provide coverage for abortions is an unprecedented change in federal abortion funding policy that fails to take into account the Hyde Amendment that prohibits federal funds from subsidizing health insurance plans that provide coverage of abortions; and

WHEREAS, the provision of federal funding for health insurance plans that provide abortion coverage is nothing short of taxpayer-funded and government-endorsed abortion; and

WHEREAS, Public Law 111-148 allows a state to opt out of permitting health insurance plans that cover abortions from participating in the health insurance exchanges within that state and thus prohibit taxpayer money from subsidizing plans that cover abortions within that state; and

WHEREAS, the U.S. Supreme Court has, in past decisions, concluded that the decision not to fund abortion services places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy and that a state may engage in unequal subsidization of abortion and other medical services to encourage alternative activity considered to be in the public interest; and

WHEREAS, a January 2010 Quinnipiac University poll showed that 7 in 10 Americans were opposed to provisions in federal health care reform that use federal funds to pay for abortions and abortion coverage.

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

**Section 1. Prohibition on coverage of abortion services in qualified health plans.** (1) A qualified health plan, as defined by 42 U.S.C. 18021, may not be offered or otherwise made available through a health insurance exchange established in the state pursuant to Public Law 111-148, the Patient Protection and Affordable Care Act, if the plan provides coverage for abortion as defined in 50-20-104.

(2) The prohibition in this section does not apply to a plan that provides coverage for an abortion performed when:

(a) the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; or

(b) the pregnancy is the result of an act of rape or incest.

**Section 2. Construction.** (1) The provisions of [section 1] may not be construed as creating or recognizing a right to abortion.

(2) It is not the intent of [section 1] to make lawful an abortion that is currently unlawful.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections 1 and 2].

Approved April 30, 2021

## CHAPTER NO. 353

[HB 260]

AN ACT REVISING NONRESIDENT FISHING LICENSE LAWS; REVISING FEES; REVISING THE NUMBER OF DAYS CERTAIN LICENSES ARE VALID; AMENDING SECTIONS 87-2-302, 87-2-304, AND 87-2-307, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 87-2-302, MCA, is amended to read:

“**87-2-302. Class B—nonresident fishing license.** Any person not a resident, as defined in 87-2-102, upon payment of the sum of \$86 \$100 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a Class B license that entitles the holder to fish with hook and line as authorized by the rules and regulations of the department.”

**Section 2.** Section 87-2-304, MCA, is amended to read:

**“87-2-304. Class B-4—two one-day nonresident fishing license.**

(1) Any person not a resident, as defined in 87-2-102, upon payment of the sum of ~~\$25~~ \$14 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a ~~2-day~~ 1-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for ~~2~~ 1 calendar ~~days~~ day as indicated on the license.

(2) *When purchasing a license pursuant to this section, the applicant shall indicate, and the license must state, on which calendar date the license will be used. There is no limit on the number of 1-day licenses a person may purchase. If the person is purchasing multiple 1-day licenses at one time, the department may issue a single license listing the multiple calendar dates for which the license is valid. The dates need not be consecutive.”*

**Section 3.** Section 87-2-307, MCA, is amended to read:

**“87-2-307. Class B-5—10 five-day nonresident fishing license.** (1) Any

person not a resident, as defined in 87-2-102, upon payment of the sum of \$56 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a ~~10-day~~ 5-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for ~~10~~ 5 consecutive days as indicated on the license.

(2) *When purchasing a license pursuant to this section, the applicant shall indicate, and the license must state, on which calendar dates the license will be used. There is no limit on the number of 5-day licenses a person may purchase. If the person is purchasing multiple 5-day licenses at one time, the department may issue a single license listing the calendar dates for which the license is valid. The 5-day periods need not be consecutive.”*

**Section 4. Effective date.** [This act] is effective March 1, 2022.

Approved April 30, 2021

## CHAPTER NO. 354

[HB 302]

AN ACT REQUIRING AUTHORIZATION OF THE BOARD OF COUNTY COMMISSIONERS BEFORE WILD BUFFALO OR WILD BISON ARE RELEASED INTO A COUNTY; REQUIRING RELEASE OF WILD BUFFALO OR WILD BISON TO MEET CERTAIN CONDITIONS; AMENDING SECTIONS 7-1-111, 81-2-120, AND 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Transplantation or relocation of wild buffalo or wild bison into county -- authorization.** (1) A board of county commissioners shall review any proposal made by the department of livestock or the department of fish, wildlife, and parks under 81-2-120 or 87-1-216 to authorize the transplantation or relocation of any wild buffalo or wild bison certified by the state veterinarian as brucellosis-free into that county.

(2) A board of county commissioners may not authorize a wild buffalo or wild bison to be transplanted or relocated into a county unless:

(a) the animal is certified as brucellosis-free; and

(b) the board finds the transplantation or relocation does not threaten the public health, safety, and welfare of the citizens of the county.

(3) The provisions of this section do not apply to proposals made by the department of livestock or the department of fish, wildlife, and parks under 81-2-120 or 87-1-216 to transplant or relocate wild buffalo or wild bison certified by the state veterinarian as brucellosis-free to a qualified tribal entity pursuant to 81-2-120(1)(a)(ii).

**Section 2.** Section 7-1-111, MCA, is amended to read:

**“7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, [section 1], or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection

is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12."

**Section 3.** Section 81-2-120, MCA, is amended to read:

**"81-2-120. Management of wild buffalo or wild bison for disease control.** (1) Whenever a publicly owned wild buffalo or wild bison from a herd that is infected with a dangerous disease enters the state of Montana on public or private land and the disease may spread to persons or livestock or whenever the presence of wild buffalo or wild bison may jeopardize Montana's compliance with other state-administered or federally administered livestock disease control programs, the department may, under a plan approved by the governor, use any feasible method in taking one or more of the following actions:

(a) *The live wild buffalo or wild bison may be captured, tested, quarantined, and vaccinated. Wild buffalo or wild bison that are certified by the state veterinarian as brucellosis-free may be:*

(i) *sold to help defray the costs that the department incurs in building, maintaining, and operating necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or wild bison. Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or wild bison must be deposited in the state special revenue fund to the credit of the department. Any revenue generated in excess of the costs referred to in this subsection (1)(a)(i) must be deposited in the state special revenue fund provided for in 87-1-513(2).*

(ii) *transferred to a qualified tribal entity that participates in the disease control program provided for in this subsection (1)(a). Acquisition of wild*

*buffalo or wild bison by a qualified tribal entity must be done in a manner that does not jeopardize compliance with a state-administered or federally administered livestock disease control program. The department may adopt rules consistent with this section governing tribal participation in the program or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control program.*

(a)(b) The live wild buffalo or wild bison may be physically removed by the safest and most expeditious means from within the state boundaries, including but not limited to hazing and aversion tactics or capture, transportation, quarantine, or delivery to a department-approved slaughterhouse.

(b)(c) The live wild buffalo or wild bison may be destroyed by the use of firearms. If a firearm cannot be used for reasons of public safety or regard for public or private property, the animal may be relocated to a place that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

(c)(d) The live wild buffalo or wild bison may be taken through limited public hunts pursuant to 87-2-730 when authorized by the state veterinarian and the department.

~~(d) The live wild buffalo or wild bison may be captured, tested, quarantined, and vaccinated. Wild buffalo or wild bison that are certified by the state veterinarian as brucellosis-free may be:~~

~~(i) sold to help defray the costs that the department incurs in building, maintaining, and operating necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or wild bison; or~~

~~(ii) transferred to qualified tribal entities that participate in the disease control program provided for in this subsection (1)(d). Acquisition of wild buffalo or wild bison by a qualified tribal entity must be done in a manner that does not jeopardize compliance with a state-administered or federally administered livestock disease control program. The department may adopt rules consistent with this section governing tribal participation in the program or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control program.~~

~~(e) Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or wild bison must be deposited in the state special revenue fund to the credit of the department.~~

~~(f) Any revenue generated in excess of the costs referred to in subsection (1)(d)(i) must be deposited in the state special revenue fund provided for in 87-1-513(2).~~

(2) Whenever the department is responsible for the death of a wild buffalo or wild bison, either purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a department-approved slaughterhouse or slaughter destination.

(3) In disposing of the carcass, the department:

(a) as first priority, may donate a wild buffalo or wild bison carcass to a charity or to an Indian tribal organization; or

(b) may sell a wild buffalo or wild bison carcass to help defray expenses of the department. If the carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or wild bison carcass to the state special revenue fund to the credit of the department.

(4) The department may adopt rules with regard to management of publicly owned wild buffalo or wild bison that enter Montana on private or public land and that are from a herd that is infected with a contagious disease that may spread to persons or livestock and may jeopardize compliance with

other state-administered or federally administered livestock disease control programs.

(5) *Except for a transfer to a qualified tribal entity pursuant to subsection (1)(a)(ii), after a wild buffalo or wild bison is certified brucellosis-free by the state veterinarian, the department may authorize its transplantation or relocation into any state county pursuant to this section after the department receives the authorization of the board of county commissioners of the affected county or counties pursuant to [section 1].*

**Section 4.** Section 87-1-216, MCA, is amended to read:

**“87-1-216. Wild buffalo or bison as species in need of management – policy – department duties.** (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease-free; and

(c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease. The department may, after agreement and authorization by the department of livestock, authorize the public hunting of wild buffalo or bison that have been exposed to or infected with a contagious disease, pursuant to 87-2-730. The department may, following consultation with the department of livestock, adopt rules to authorize the taking of bison where and when necessary to prevent the transmission of a contagious disease.

(3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to persons or property.

(4) The department may not:

(a) release, transplant, *relocate*, or allow wild buffalo or bison on any private or public land in Montana that has not been authorized for that use by the private or public owner; or

(b) *except for a transfer to a qualified tribal entity pursuant to 81-2-120(1)(a)(ii), release, transplant, or relocate any wild buffalo or bison into any state county without authorization of the board of county commissioners of the affected county or counties pursuant to [section 1].*

(5) Subject to subsection (4), the department shall develop and adopt a management plan before any wild buffalo or bison under the department’s

jurisdiction may be released, ~~or~~ transplanted, *or relocated* onto private or public land in Montana. A plan must include but is not limited to:

(a) measures to comply with any applicable animal health protocol required under Title 81, under subsection (2)(b), or by the state veterinarian;

(b) any animal identification and tracking protocol required by the department of livestock to identify the origin and track the movement of wild buffalo or bison for the purposes of subsections (2)(b) and (5)(c);

(c) animal containment measures that ensure that any animal ~~transplanted or released~~, *transplanted, or relocated* on private or public land will be contained in designated areas. Containment measures must include but are not limited to:

(i) any fencing required;

(ii) contingency plans to expeditiously relocate wild buffalo or bison that enter private or public property where the presence of the animals is not authorized by the private or public owner;

(iii) contingency plans to expeditiously fund and construct more effective containment measures in the event of an escape; and

(iv) contingency plans to eliminate or decrease the size of designated areas, including the expeditious relocation of wild buffalo or bison if the department is unable to effectively manage or contain the wild buffalo or bison.

(d) a reasonable means of protecting public safety and emergency measures to be implemented if public safety may be threatened;

(e) a reasonable maximum carrying capacity for any proposed designated area using sound management principles, including but not limited to forage-based carrying capacity, and methods for not exceeding that carrying capacity, including in years of drought or severe winters. The carrying capacity must be based on a forage analysis conducted in accordance with standards contained in the most recent natural resources conservation service field office technical guide by a range scientist who is on the staff of:

(i) the Montana state university-Bozeman college of agriculture;

(ii) the United States natural resources conservation service; or

(iii) a technical service provider certified by either the natural resources conservation service or the society for range management.

(f) identification of long-term, stable funding sources that would be dedicated to implementing the provisions of the management plan for each designated area.

(6) When developing a management plan in accordance with subsection (5), the department shall provide the opportunity for public comment and hold a public hearing in the affected county or counties. Prior to making a decision to release, ~~or~~ transplant, *or relocate* wild buffalo or bison onto private or public land in Montana, the department shall respond to all public comment received and publish a full record of the proceedings at any public hearing.

(7) The department is liable for all costs incurred, including costs arising from protecting public safety, and any damage to private property that occurs as a result of the department's failure to meet the requirements of subsection (5).

(8) When adopting and implementing rules regarding the special wild buffalo or bison license issued pursuant to 87-2-730, the department shall consult and cooperate with the department of livestock regarding when and where public hunting may be allowed and the safe handling of wild buffalo or bison parts in order to minimize the potential for spreading any contagious disease to persons or to livestock."

**Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, part 21, and the provisions of Title 75, chapter 5, part 21, apply to [section 1].

**Section 7. 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 8. Effective date.** [This act] is effective on passage and approval.

**Section 9. Applicability.** [This act] applies to releases, transplantation, relocations, or transfers of wild buffalo or wild bison on or after [the effective date of this act].

Approved April 30, 2021

## CHAPTER NO. 355

[HB 341]

AN ACT DIRECTING THAT MEDICAID APPROPRIATIONS BE USED ONLY FOR MEDICAID EXPENDITURES; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriations for medicaid expenditures.** Appropriations in a general appropriations act for medicaid may be used only to pay for or administer medicaid services.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2021.

Approved April 30, 2021

## CHAPTER NO. 356

[HB 416]

AN ACT ESTABLISHING EDUCATIONAL REQUIREMENTS FOR SUPERVISORS IN THE CHILD PROTECTIVE SERVICES SYSTEM; AMENDING SECTION 52-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 52-2-111, MCA, is amended to read:

**“52-2-111. Administrative duties of department.** (1) Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

- (1)(a) adopt rules necessary to carry out the purposes of this part; and
- (2)(b) administer or supervise all child welfare services of the state.

(2) *The department division responsible for administering child welfare services shall require all employees hired as district supervisors or supervisors of field staff to complete annual child welfare supervisory training.*

(3) *The annual child welfare supervisory training may be made available to qualifying child protection specialists who demonstrate an interest and aptitude in becoming a supervisor in the child protection system.*

**Section 2. Transition.** To implement the provisions of [this act]:

(1) all division employees who are in supervisory positions on [the effective date of this act] shall complete an initial annual child welfare supervisory training within 1 year of [the effective date of this act]; and

(2) all department employees who are hired after [the effective date of this act] to fill a supervisory position shall complete an initial annual child welfare supervisory training within 1 year of the date of hiring.

(3) The department shall update the children, families, health, and human services interim committee during the 2021-2022 interim on its progress in complying with the provisions of [this act].

**Section 3. Effective date.** [This act] is effective July 1, 2021.

**Section 4. Applicability.** [Section 1] applies to individuals hired for supervisory positions on or after July 1, 2021.

Approved April 30, 2021

## CHAPTER NO. 357

[HB 429]

AN ACT GENERALLY REVISING THE GOVERNOR'S POWER TO SUSPEND ELECTION LAWS DURING A STATE OF DISASTER OR EMERGENCY; PROVIDING FOR A LEGISLATIVE POLLING PROCESS BY THE SECRETARY OF STATE TO VOTE ON WHETHER TO APPROVE THE GOVERNOR'S SUSPENSION OF ELECTION LAWS; AMENDING SECTION 10-3-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Statement of purpose – legislative poll – legislative oversight of election law suspensions.** (1) In order to prevent an overly broad delegation of legislative powers to the executive branch and to ensure continuity of government during a period of emergency as provided in Article III, section 2, of the Montana constitution, the legislature retains the authority to limit the governor's ability to unilaterally revise election laws while providing a means to provide for a prompt and timely oversight through an expedited polling process.

(2) When the legislature is not in session, the governor may, in writing, request the secretary of state to poll the members of the legislature to determine if a majority of the members of the house of representatives and a majority of the members of the senate are in favor of a legislative declaration to suspend the provisions of any statute prescribing the procedures for an election or otherwise control the ingress and egress to a polling location as provided in 10-3-104(4).

(3) The request must:

(a) state the conditions warranting the poll; and

(b) contain a legislative declaration to temporarily suspend the election laws.

(4) Within 3 calendar days after receiving a request, the secretary of state shall send a ballot to all legislators by using any reasonable and reliable means, including electronic delivery, that contains:

(a) the legislative declaration subject to the vote; and

(b) the date by which legislators shall return the ballot, which may not be more than 10 calendar days after the date the ballots were sent.

(5) A legislator may cast and return a vote by delivering the ballot in person, by mailing, or by sending the ballot by facsimile transmission or electronic mail 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 a majority of the members of each house vote to approve the declaration, the declaration that was sent with the ballot has the force and effect of law. A ballot that is not returned by the deadline established by the secretary of state is considered a vote against the declaration.

(6) If the declaration is not approved, the governor may request another legislative poll under the provisions of this section or call a special session of the legislature under the provisions of Article VI, section 11, of the Montana constitution to consider the temporary suspension of the election laws.

**Section 2.** Section 10-3-104, MCA, is amended to read:

**“10-3-104. General authority of governor.** (1) The governor is responsible for carrying out parts 1 through 4 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, the governor may:

(a) *except as provided in subsection (4)*, suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) *except as provided in subsection (4)*, control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or disaster.

(4) *The governor may not suspend the provisions of any statute prescribing the procedures for an election or otherwise control the ingress and egress to a polling location without the consent of the legislature through the polling process provided in [section 1] or through a regular or special legislative session.”*

**Section 3. Codification instruction.** [Section 1] 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 1].

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

Approved April 30, 2021

## CHAPTER NO. 358

[HB 450]

AN ACT REVISING LAWS RELATED TO DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW; PROVIDING THAT COURT-ORDERED DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW MAY NOT CREATE MORE THAN FOUR NEW LOTS OR PARCELS; AND AMENDING SECTION 76-3-201, MCA.

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

**Section 1.** Section 76-3-201, MCA, is amended to read:

**“76-3-201. Exemption for certain divisions of land -- fees for examination of division.** (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection ~~(3)~~ (4), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) *An exempt division of land as provided in subsection (1)(a) is not considered a subdivision under this chapter if not more than four new lots or parcels are created from the original lot or parcel.*

~~(2)~~(3) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

~~(3)~~(4) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. Except as provided in subsection ~~(4)~~ (5), a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection ~~(3)~~(b) (4)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter, if applicable.

~~(4)~~(5) If a parcel of land was divided pursuant to subsection (1)(b) and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of this chapter.

~~(5)~~(6) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.”

Approved April 30, 2021

## CHAPTER NO. 359

[HB 468]

AN ACT AUTHORIZING THE USE OF DOGS WHILE HUNTING BLACK BEARS; ESTABLISHING A TRAINING SEASON; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 87-2-521 AND 87-6-404, MCA.

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

**Section 1.** Section 87-2-521, MCA, is amended to read:

**“87-2-521. Class D-3—resident hound training license.** A person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of \$5, may receive a Class D-3 hound training license that entitles the holder to use a dog or dogs to aid in pursuing mountain lions, or bobcats, or black bears during the a training season established in 87-6-404(4).”

**Section 2.** Section 87-6-404, MCA, is amended to read:

**“87-6-404. Unlawful use of dog while hunting.** (1) Except as provided in subsections (3) through (6), a person may not:

(a) chase any game animal or fur-bearing animal with a dog; or  
 (b) purposely, knowingly, or negligently permit a dog to chase, stalk, pursue, attack, or kill a hooved game animal. If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) Except as provided in subsection (3)(f), a peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing a hooved game animal may destroy that dog on public land or on private land at the request of the landowner without criminal or civil liability.

(3) A person may:

(a) take game birds during the appropriate open season with the aid of a dog;

(b) hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs;

(c) hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs;

(d) hunt black bears during the spring season with the aid of a dog or dogs as authorized by the commission;

~~(d)~~(e) train bird hunting dogs pursuant to the requirements of 87-3-602;

~~(e)~~(f) conduct field trials for bird hunting dogs pursuant to the requirements of 87-3-603 or on private land; and

~~(f)~~(g) use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (2).

(4) A resident who possesses a Class D-3 resident hound training license may:

(a) pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year; and

(b) *pursue black bears with a dog or dogs during a training season from the end of the spring season for black bear through June 15 of that year as authorized by the commission.*

(5) A nonresident who possesses a Class D-4 hound handler license may pursue mountain lions with a dog or dogs pursuant to 87-2-519.

(6) (a) A person with a valid hunting license issued pursuant to Title 87, chapter 2, may use a dog to track a wounded game animal during an appropriate open season. Any person using a dog in this manner:

(i) shall maintain physical control of the dog at all times by means of a maximum 50-foot lead attached to the dog's collar or harness;

(ii) during the general season, whether handling or accompanying the dog, shall wear hunter orange material pursuant to 87-6-414;

(iii) may carry any weapon allowed by law;

(iv) may dispose of the wounded game animal using any weapon allowed by the valid hunting license; and

(v) shall tag an animal that has been reduced to possession in accordance with 87-6-411.

(b) Dog handlers tracking a wounded game animal with a dog are exempt from licensing requirements under Title 87, chapter 2, as long as they are accompanied by the licensed hunter who wounded the game animal.

(7) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined 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. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(8) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.”

Approved April 30, 2021

## CHAPTER NO. 360

[HB 475]

AN ACT REVISING THE DEFINITION OF ELIGIBLE RENEWABLE RESOURCE TO INCLUDE EXISTING HYDROELECTRIC RESOURCES; AMENDING SECTIONS 69-3-2003, 69-3-2006, AND 90-4-1005, 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.

(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.

(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 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

(5) (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.

(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.

(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.

(10) (a) “Eligible renewable resource” means a facility either located within Montana or delivering electricity from another state into Montana that, *except as provided in subsection (10)(b)*, commences commercial operation after January 1, 2005, ~~or a hydroelectric project expansion referred to in subsection (10)(d)(iii), any of which and that~~ produces electricity from one or more of the following sources:

(a)(i) wind;

(b)(ii) solar;

(c)(iii) geothermal;

(d)(iv) water power, in the case of a hydroelectric project that:

(i)(A) does not require a new appropriation; or diversion; or impoundment of water and that has a nameplate rating of 10 megawatts or less;

(ii)(B) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less; or

(iii) is an expansion of an existing hydroelectric project that commences construction and increases existing generation capacity on or after October 1, 2013. Engineering estimates of the average incremental generation from the

increase in existing generation capacity must be submitted to the commission for review. The commission shall determine an average annual incremental generation that will constitute the eligible renewable resource from the capacity expansion, subject to further revision by the commission in the event of significant changes in stream flow or dam operation:

- (v) nuclear power;
- (e)(vi) landfill or farm-based methane gas;
- (f)(vii) gas produced during the treatment of wastewater;
- (g)(viii) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, including wood pieces that have been treated with chemical preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility that has a nameplate capacity of 5 megawatts or less;
- (h)(ix) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells; and
- (i)(x) the renewable energy fraction from:
  - (i)(A) the sources identified in this subsection (10) of electricity production from a multiple-fuel process with fossil fuels;
  - (ii)(B) flywheel storage as defined in 15-6-157(4)(d);
  - (iii)(C) hydroelectric pumped storage as defined in 15-6-157(4)(e);
  - (iv)(D) batteries; and
  - (v)(E) 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.

(b) *The term also includes electricity produced from an existing hydroelectric facility that commenced commercial operation in Montana before January 1, 2005.*

- (11) "Local owners" means:
- (a) Montana residents;
  - (b) general partnerships of which all partners are Montana residents;
  - (c) business entities organized under the laws of Montana that:
    - (i) have less than \$50 million of gross revenue;
    - (ii) have less than \$100 million of assets; and
    - (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;
  - (d) Montana nonprofit organizations;
  - (e) Montana-based tribal councils;
  - (f) Montana political subdivisions or local governments;
  - (g) Montana-based cooperatives other than cooperative utilities; or
  - (h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

(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.

(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.

(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) “Renewable energy fraction” means the proportion of electricity output directly attributable to electricity and associated renewable energy credits produced by one of the sources identified in subsection (10).

(16) “Seasonality” means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

(17) “Small customer” means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(18) “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.

(19) “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 69-3-2006, MCA, is amended to read:

**“69-3-2006. Commission authority – rulemaking authority.**

(1) The commission has the authority to generally implement and enforce the provisions of this part.

(2) The commission shall adopt rules before June 1, 2006, to:

(a) select a renewable energy credit tracking system to verify compliance with this part;

(b) establish a system by which renewable resources become certified as eligible renewable resources;

(c) define the process by which waivers from full compliance with this part may be granted;

(d) establish procedures under which contracts for eligible renewable resources and renewable energy credits may receive advanced approval;

(e) define the requirements governing renewable energy procurement plans and annual reports; and

(f) generally implement and enforce the provisions of this part.

~~(3) The commission may adopt rules to ensure that the calculation of energy generation and the renewable energy credits for eligible renewable resources under 69-3-2003(10)(d)(iii) reflects the actual electrical production from the expansion as typically reduced by seasonal water conditions.”~~

**Section 3.** Section 90-4-1005, MCA, is amended to read:

**“90-4-1005. Energy development and demonstration grant program.** (1) There is an energy development and demonstration grant program within the department of environmental quality to fund technology development and demonstration:

(a) advancing the development and utilization of energy storage systems, including but not limited to mediums, such as accumulators, fuel cells, and batteries, that store energy that may be drawn upon at a later date for use;

(b) developing storage systems specifically designed to store energy generated from eligible renewable resources as defined in 69-3-2003 69-3-2003(10)(a), including but not limited to compressed air energy storage systems;

(c) promoting the efficiency, environmental performance, and cost-competitiveness of energy storage systems beyond the current level of technology; and

(d) advancing the development of alternative energy systems as defined in 15-32-102.

(2) Entities that may be eligible for grants include but are not limited to units of the Montana university system, agricultural research centers, or private entities or research centers.

(3) Money appropriated to the department of environmental quality for the purpose of the energy development and demonstration grant program may be used by the department for providing individual grants in amounts up to \$500,000 and for administrative costs of 1% of the grant award.

(4) The grant application may include:

(a) a project plan sufficient to allow a reasonable determination regarding the potential feasibility of advancing energy storage or alternative energy systems;

(b) a business plan to allow a reasonable determination regarding the financial feasibility of the project; and

(c) a reporting process to ensure progress toward project goals.”

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

**Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2019.

Approved April 30, 2021

## CHAPTER NO. 361

[HB 479]

AN ACT PROVIDING WARRANT REQUIREMENTS FOR THIRD-PARTY ELECTRONIC DATA; PROVIDING NOTIFICATION REQUIREMENTS; AMENDING SECTIONS 46-5-601 AND 46-5-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 46-5-601, MCA, is amended to read:

**“46-5-601. Definitions.** As used in this part, the following definitions apply:

(1) “Contents” means any information concerning the substance, purport, or meaning of a communication.

(2) (a) “Electronic communication” means:

(i) any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted *or stored* in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system; or

(ii) any aural transfer made *or stored* in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other similar connection between the point of origin and the point of reception, including but not limited to the use of the wire, cable, or other similar connection in a switching station.

(b) The term does not include:

(i) an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation;

(ii) a communication made through a tone-only paging device;

(iii) a communication from a tracking device, including an electronic or mechanical device that permits the tracking of the movement of a person or object; or

(iv) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(3) “Electronic communication service” means:

(a) a service that provides to users the ability to send or receive electronic communications;

(b) a service that provides to users computer storage or processing services; or

(c) a service that acts as an intermediary in the transmission of electronic communications.

(4) “Governmental entity” means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

(5) (a) “Subscriber record” means a record of or information about an electronic communication service or remote computing service that reveals the subscriber’s or customer’s:

(i) name;

(ii) address;

(iii) local and long-distance telephone connection record, or record of session time and duration;

(iv) length of service, including start date;

(v) type of service used;

(vi) telephone number, instrument number, or other subscriber or customer number or identification, including a temporarily assigned network address; and

(vii) means and source of payment for the service.

(b) The term does not include customer proprietary network information as defined in 47 U.S.C. 222(h)(1).”

**Section 2.** Section 46-5-602, MCA, is amended to read:

**“46-5-602. Search warrant or investigative subpoena required.**

(1) A governmental entity may only require disclosure by a provider of an electronic communication service of the contents of an electronic communication stored, held, or maintained, or transmitted by an electronic communication service that service other than a subscriber record pursuant to a search warrant or investigative subpoena issued by a court upon a finding of probable cause pursuant to Title 46, chapter 5, part 2, or Title 46, chapter 4, part 3.

(2) *The electronic communications collected under this section must be deleted after the conclusion of the criminal investigation, postconviction and after all appeals have been exhausted, or in accordance with data retention requirements under the law.*

(3) *The warrant and investigative subpoena requirements of this section do not apply to the electronic communications of adults or youth currently incarcerated in a correctional facility.”*

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

Approved April 30, 2021

## CHAPTER NO. 362

[HB 496]

AN ACT REVISING COUNTY ZONING LAWS; REQUIRING A LOCAL GOVERNING BODY TO HOLD A PUBLIC HEARING ON CERTAIN PUBLIC LAND USE; REMOVING A LOCAL BOARD OF ADJUSTMENTS PROHIBITION TO DENY A PUBLIC LAND USE THAT IS CONTRARY TO ZONING REGULATIONS; AND AMENDING SECTION 76-2-402, MCA.

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

**Section 1.** Section 76-2-402, MCA, is amended to read:

**“76-2-402. Local zoning regulations – application to agencies.**

(1) Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, ~~as defined below, shall must~~ be held ~~and the agency shall attend the public hearing.~~

~~(1)(2) The local board of adjustments, as provided in this chapter, governing body shall hold a hearing within 30 days of the date the agency gives notice to the board local governing body of its intent to develop land contrary to local zoning regulations.~~

~~(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.”~~

Approved April 30, 2021

## CHAPTER NO. 363

[HB 520]

AN ACT REVISING SEXUAL ASSAULT LAWS; CREATING A SAFE HARBOR FOR SEX WORKERS WHO ARE SEXUALLY ASSAULTED; AND AMENDING SECTION 50-32-609, MCA.

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

**Section 1.** Section 50-32-609, MCA, is amended to read:

**“50-32-609. Good Samaritan protections.** (1) The provisions of 45-5-626, 45-9-102, 45-9-107, and 45-10-103 do not apply to:

(a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the person’s seeking medical assistance for another person; or

(b) a person who experiences a drug-related overdose and is in need of medical assistance if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.

(2) The provisions of 45-9-102, 45-9-107, and 45-10-103 do not apply to a pregnant woman seeking or receiving evaluation, treatment, or support services for a substance use disorder.

(3) *The provisions of 45-5-601(2)(a) do not apply to a person reporting a crime under 45-5-502 or 45-5-503.*

~~(3)(4) A person’s pretrial release, probation, furlough, supervised release, or parole may not be revoked based on an incident for which the person would be immune from arrest, charge, or prosecution under this section.~~

~~(4)(5) A person’s act of providing first aid or other medical assistance to a person who is experiencing an actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under this section.~~

~~(5)(6) This section may not be construed to:~~

(a) bar the admissibility of evidence obtained in connection with the investigation and prosecution of other crimes or violations committed by a person who otherwise qualified for limited immunity under this section;

(b) limit, modify, or remove immunity from liability currently available to public entities, public employees, or prosecutors or by law; or

(c) create a new cause of action or other source of criminal liability for a pregnant woman with a substance use disorder who does not seek or receive evaluation, treatment, or support services for a substance use disorder.”

Approved April 30, 2021

## CHAPTER NO. 364

[HB 539]

AN ACT GENERALLY REVISING LAWS RELATED TO COUNTY ATTORNEYS; REVISING WHEN SPECIAL COUNSEL MAY BE EMPLOYED; LIMITING WHEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS REQUIRED TO REPORT ALLEGATIONS OF CHILD SEXUAL ABUSE OR CHILD SEXUAL EXPLOITATION TO A COUNTY ATTORNEY; REVISING THE TIMING OF REPORTING TO THE ATTORNEY GENERAL; AND AMENDING SECTIONS 7-4-2705, 41-3-202, AND 41-3-210, MCA.

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

**Section 1.** Section 7-4-2705, MCA, is amended to read:

**“7-4-2705. Employment of special counsel in certain counties.** ~~Except in counties having a taxable valuation of \$50 million or more, the~~ *The* board of county commissioners may employ or authorize the county attorney to employ special counsel to assist in the prosecution of any criminal case pending in the county or to represent the county in any civil action in which the county is a party.”

**Section 2.** Section 41-3-202, MCA, is amended to read:

**“41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated.

(b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation *when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older* or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation *when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older*, the department shall immediately report the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

(ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

(c) If the department determines that an investigation and a safety and risk assessment are required, a social worker shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to determine whether the living arrangement presents an unsafe environment for the child. The safety and risk assessment may include an investigation at the home of the child involved, the child’s school or day-care facility, or any

other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, if the initial investigation does not within 48 hours result in the development of independent, corroborative, and attributable information indicating that there exists a current risk of physical or psychological harm to the child, a child may not be removed from the living arrangement. If independent, corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the department shall then conduct a safety and risk assessment.

(3) The social worker is responsible for conducting the safety and risk assessment. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the child is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that the child is suffering abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document the determinations of the safety and risk assessment; and

(ii) notify the child's family of the determinations of the safety and risk assessment, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk assessment determinations and associated records, except for medical records, within 30 days after the end of the 3-year period starting from the date of completion of the safety and risk assessment.

(c) Safety and risk assessment determinations and associated records may be maintained for a reasonable time as defined by department rule under the following circumstances:

(i) the safety and risk assessment determines that abuse or neglect occurred;

(ii) there had been a previous or there is a subsequent report and investigation resulting in a safety and risk assessment concerning the same person; or

(iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth in need of care based on the circumstances surrounding the initial allegations.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written safety and risk assessment to the department and, upon request, to the family. Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and safety and risk assessment determinations. Unless records are required to be destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department.

(8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon.”

**Section 3.** Section 41-3-210, MCA, is amended to read:

**“41-3-210. County attorney duties – certification – retention of records – reports to attorney general and legislature.** (1) (a) The county attorney shall gather all case notes, correspondence, evaluations, interviews, and other investigative materials pertaining to each report from the department or investigation by law enforcement of sexual abuse or sexual exploitation of a child made within the county *when the alleged perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older*. After a report is made or an investigation is commenced, the following individuals or entities shall provide to the county attorney all case notes, correspondence, evaluations, interviews, and other investigative materials related to the report or investigation:

- (i) the department;
- (ii) state and local law enforcement; and
- (iii) all members of a county or regional interdisciplinary child information and school safety team established under 52-2-211.

(b) The duty to provide records to the county attorney under subsection (1)(a) remains throughout the course of an investigation, an abuse and neglect proceeding conducted pursuant to this part, or the prosecution of a case involving the sexual abuse of a child or sexual exploitation of a child.

(c) Upon receipt of a report from the department, as required in 41-3-202, that includes an allegation of sexual abuse of a child or sexual exploitation of a child, the county attorney shall certify in writing to the person who initially reported the information that the county attorney received the report. The certification must include the date the report was received and the age and gender of the alleged victim. If the report was anonymous, the county attorney shall provide the certification to the department. If the report was made to the county attorney by a law enforcement officer, the county attorney is not required to provide the certification.

(2) The county attorney shall retain records relating to the report or investigation, including the certification, case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

(3) ~~Each~~ *By June 1 of each year, each* county attorney shall report ~~every 6 months~~ to the attorney general. The report to the attorney general must include, ~~for each report, for each report~~ from the department or investigation by law enforcement::

- ~~(a) a unique case identifier;~~
- ~~(b) the date that the initial report or allegation was received by the county attorney;~~

~~(c) the date of any decision to prosecute based on a report or investigation;~~  
~~(d) the date of any decision to decline to prosecute based on a report or investigation; and~~

~~(e) if charges are filed against a defendant, any known outcomes of the case~~

~~(a) a unique case identifier;~~

~~(b) the date that the initial report or allegation was received by the county attorney;~~

~~(c) the date of any decision to prosecute based on a report or investigation;~~

~~(d) the date of any decision to decline to prosecute based on a report or investigation; and~~

~~(e) if charges are filed against a defendant, any known outcomes of the case.~~

(4) The attorney general shall report to the law and justice interim committee each year by September 1 and as provided in 5-11-210. The reports must provide aggregated information regarding the ~~status of the~~ *status of the* cases reported by the county attorneys, ~~including data on the total number of cases reported, the number of cases declined for prosecution, and the number of cases charged,~~ *including data on the total number of cases reported, the number of cases declined for prosecution, and the number of cases charged."*

Approved April 30, 2021

## CHAPTER NO. 365

[HB 549]

AN ACT REVISING BIENNIAL SUICIDE REDUCTION PLANS TO INCLUDE INFORMATION SPECIFIC TO ACTIVE DUTY MEMBERS, RESERVE MEMBERS, AND GUARD MEMBERS OF THE UNIFORMED SERVICES AND VETERANS; AMENDING SECTION 53-21-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 53-21-1102, MCA, is amended to read:

**"53-21-1102. Suicide reduction plan.** (1) The department of public health and human services shall produce a biennial suicide reduction plan that must be submitted to the legislature as provided in 5-11-210.

(2) The plan must include:

(a) an assessment of both risk and protective factors impacting Montana's suicide rate;

*(b) an assessment of both risk factors and protective factors impacting the suicide rates of active duty members, reserve members, and guard members of the uniformed services and veterans in Montana;*

~~(b)~~*(c) specific activities to reduce suicide, including activities directed at active duty members, reserve members, and guard members of the uniformed services and veterans;*

~~(c)~~*(d) concrete targets for suicide reduction among various demographic populations, including but not limited to American Indians, active duty members, reserve members, and guard members of the uniformed services and veterans, and youth;*

~~(d)~~*(e) measurable outcomes for all activities; and*

~~(e)~~*(f) information on all existing state suicide reduction activities for all state agencies, as well as any known local or tribal suicide reduction activities.*

(3) Upon the development of a suicide reduction plan draft, the department shall initiate a public comment period of not less than 21 days during which members of mental health advocacy groups and other interested parties may submit comments on and suggestions for the plan. The department shall produce a final plan, which takes public comment into account, no later than 60 days after the close of the comment period. The plan must be published on the department's website and submitted to the appropriate interim committee of the legislature, the director of the department, and the governor."

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

Approved April 30, 2021

## CHAPTER NO. 366

[HB 590]

AN ACT PROVIDING THAT A MILITARY MEMBER ON VOLUNTARY OR INVOLUNTARY ORDERS IS ENTITLED TO A LEAVE OF ABSENCE; PROVIDING A REMEDY; AMENDING SECTIONS 10-1-1003, 10-1-1004, AND 10-1-1021, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 10-1-1003, MCA, is amended to read:

**"10-1-1003. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Department" means the department of labor and industry established in 2-15-1701.

(2) "Elected official" means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.

(3) (a) "Employer" means any public or private person or entity providing employment in Montana.

(b) The term does not include the United States.

(4) "Federally funded military duty" means duty, *whether voluntary or involuntary*, including training, performed pursuant to orders issued under Title 10 or Title 32 of the United States Code and the time period, if any, required pursuant to a licensed physician's certification to recover from an illness or injury incurred while performing the duty.

(5) "Member" means a member of the state's organized militia provided for in 10-1-103 or a member of the national guard of another state.

(6) "Military service" includes both federally funded military duty and state military duty, *whether voluntary or involuntary*.

(7) (a) "State military duty" means duty, *whether voluntary or involuntary*, performed by a member pursuant to Article VI, section 13, of the Montana constitution, the authority of the governor of any other state, or 10-1-505 and the time period, if any, required pursuant to a licensed physician's certification to recover from an illness or injury incurred while performing the state military duty.

(b) The term does not include federally funded military duty."

**Section 2.** Section 10-1-1004, MCA, is amended to read:

**"10-1-1004. Rights under federal law.** A person ordered to federally funded military duty is entitled to all of the employment and reemployment rights and benefits provided pursuant to the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.,

and other applicable federal law. *The rights provided under the Uniformed Services Employment and Reemployment Rights Act of 1994 may be enforced in a lawsuit pursuant to this part.*”

**Section 3.** Section 10-1-1021, MCA, is amended to read:

**“10-1-1021. Court remedies.** (1) In a lawsuit initiated pursuant to this part, the court may provide one or more of the following remedies:

- (a) require the employer to comply with the provisions of this part;
- (b) require the employer to compensate the complainant for losses suffered by the complainant because of the employer’s violation; or
- (c) if the court finds that the employer’s violation was done willfully, as defined in 1-1-204, require the employer to pay *treble the amount of compensation* under subsection (1)(b) as liquidated damages *and punitive damages*.

(2) If the complainant is the prevailing party, the court may award reasonable attorney fees to the complainant.

(3) The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of a person under this part.”

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

Approved April 30, 2021

## CHAPTER NO. 367

[HB 616]

AN ACT AMENDING TAX INCREMENT FINANCING LAWS TO REQUIRE A GOVERNING BODY TO APPROVE A TAX INCREMENT PROVISION; AMENDING SECTIONS 7-15-4206, 7-15-4233, AND 7-15-4282, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 7-15-4206, MCA, is amended to read:

**“7-15-4206. Definitions.** The following terms, wherever used or referred to in part 43 or this part, have the following meanings unless a different meaning is clearly indicated by the context:

(1) “Agency” or “urban renewal agency” means a public agency created by 7-15-4232.

(2) “Blighted area” means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, that substantially impairs or arrests the sound growth of the city or its environs, that retards the provision of housing accommodations, or that constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation, deterioration, age obsolescence, or defective construction, material, and arrangement of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions that endanger life or property by fire or other causes; or

(o) any combination of the factors listed in this subsection (2).

(3) "Bonds" means any bonds, notes, or debentures, including refunding obligations, authorized to be issued pursuant to part 43 or this part.

(4) "Clerk" means the clerk or other official of the municipality who is the custodian of the official records of the municipality.

(5) "*Elected*" means *chosen by vote or acclamation or appointed to a vacancy in an otherwise elected position.*

~~(5)~~(6) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

~~(6)~~(7) "Local governing body" means the *elected members of a council or other elected members of a legislative body charged with governing the a municipality or consolidated city-county.*

~~(7)~~(8) "Mayor" means the chief executive of a city or town.

~~(8)~~(9) "Municipality" means any incorporated city or town in the state.

~~(9)~~(10) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality elects to undertake activities on an annual increment basis.

~~(10)~~(11) "Obligee" means any bondholder or agent or trustee for any bondholder or lessor conveying to the municipality property used in connection with an urban renewal project or any assignee or assignees of the lessor's interest or any part of the interest and the federal government when it is a party to any contract with the municipality.

~~(11)~~(12) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

~~(12)~~(13) "Public body" means the state or any municipality, township, board, commission, district, or other subdivision or public body of the state.

~~(13)~~(14) "Public officer" means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or other activities concerning dwellings in the municipality.

~~(14)~~(15) "Public use" means:

(a) a public use enumerated in 70-30-102; or

(b) a project financed by the method provided for in 7-15-4288.

~~(15)~~(16) "Real property" means all lands, including improvements and fixtures on the land, all property of any nature appurtenant to the land or used in connection with the land, and every estate, interest, right, and use, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.

~~(16)~~(17) “Redevelopment” may include:

(a) acquisition of a blighted area or portion of the area;  
(b) demolition and removal of buildings and improvements;  
(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan. If the property is condemned pursuant to Title 70, chapter 30, the private enterprise or public agencies may not develop the condemned area in a way that is not for a public use.

~~(17)~~(18) (a) “Rehabilitation” may include the restoration and renewal of a blighted area or portion of the area in accordance with an urban renewal plan by:

(i) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(ii) acquisition of real property and demolition or removal of buildings and improvements on the property when necessary to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen density, to reduce traffic hazards, to eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

(iii) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

(iv) subject to 7-15-4259(4), the disposition of any property acquired in the urban renewal area, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan.

(b) Rehabilitation may not include the development of the condemned area in a way that is not for a public use if the property is condemned pursuant to Title 70, chapter 30.

~~(18)~~(19) “Urban renewal area” means a blighted area that the local governing body designates as appropriate for an urban renewal project or projects.

~~(19)~~(20) “Urban renewal plan” means a plan for one or more urban renewal areas or for an urban renewal project. The plan:

(a) must conform to the growth policy if one has been adopted pursuant to Title 76, chapter 1; and

(b) must be sufficiently complete to indicate, on a yearly basis or otherwise:  
(i) any land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation that is proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan’s relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

~~(20)~~(21) (a) “Urban renewal project” may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve

redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part of redevelopment, rehabilitation, or conservation in accordance with an urban renewal plan.

(b) An urban renewal project may not include using property that was condemned pursuant to Title 70, chapter 30, for anything other than a public use.”

**Section 2.** Section 7-15-4233, MCA, is amended to read:

**“7-15-4233. Powers which may be exercised by urban renewal agency or authorized department.** (1) In the event the local governing body makes ~~such the~~ determination *provided for in 7-15-4232*, ~~such the~~ local governing body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(a) to formulate and coordinate a workable program as specified in 7-15-4209;

(b) to prepare urban renewal plans, *except that the local governing body shall approve the inclusion of a tax increment provision*;

(c) to prepare recommended modifications to an urban renewal project plan;

(d) to undertake and carry out urban renewal projects as required by the local governing body;

(e) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;

(f) to disseminate blight clearance and urban renewal information;

(g) to exercise the powers prescribed by 7-15-4255, except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;

(h) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;

(i) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;

(j) to insure real or personal property as provided in 7-15-4258;

(k) to effectuate the plans provided for in 7-15-4254;

(l) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;

(m) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(n) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;

(o) to negotiate for the acquisition of land;

(p) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;

(q) to organize, coordinate, and direct the administration of the provisions of this part and part 43;

(r) to perform ~~such~~ duties as *directed by* the local governing body ~~may direct so as~~ to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

(2) Any powers granted in this part or part 43 that are not included in subsection (1) as powers of the urban renewal agency or a department or other

officers of a municipality in lieu thereof of the local governing body may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.”

**Section 3.** Section 7-15-4282, MCA, is amended to read:

**“7-15-4282. Authorization for tax increment financing.** (1) An urban renewal plan as defined in 7-15-4206 or a targeted economic development district comprehensive development plan created as provided in 7-15-4279 may contain a provision or be amended to contain a *tax increment* provision for the segregation and application of tax increments as provided in 7-15-4282 through 7-15-4294. *The local governing body shall approve the adoption of a tax increment provision included in an urban renewal plan. The legislative body of a local government shall approve the adoption of a tax increment provision included in a targeted economic development district comprehensive development plan.*

(2) (a) Before adopting a tax increment financing provision as part of an urban renewal plan or a comprehensive development plan, a municipality shall provide notice to the county and the school district in which the urban renewal district or targeted economic development district is located and provide the county and school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the county or school district.

(b) Before adopting a tax increment financing provision as part of a comprehensive development plan, a county shall provide notice to the school district in which the targeted economic development district is located and provide the school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the school district.

(3) The tax increment financing provision must take into account the effect on the county and school districts that include local government territory.”

**Section 4. Applicability.** [This act] applies to tax increment provisions adopted on or after [the effective date of this act].

Approved April 30, 2021

## CHAPTER NO. 368

[HB 647]

AN ACT REVISING LAWS RELATED TO HUNTING AND FISHING LICENSES FOR NONRESIDENT COLLEGE STUDENTS; AUTHORIZING THE SALE OF CERTAIN LICENSES AT RESIDENT-EQUIVALENT PRICES; REVISING ELIGIBILITY PROVISIONS FOR ALL NONRESIDENT COLLEGE STUDENT LICENSES; AMENDING SECTION 87-2-525, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 87-2-525, MCA, is amended to read:

**“87-2-525. Nonresident college student licenses.** (1) *A Subject to the provisions of subsection (2), a student who is not a resident, as defined in 87-2-102, and who meets the qualifications of subsection (2) (3) may purchase discounted hunting and fishing licenses as follows:*

(a) *if the student’s state of residence does not offer resident-rate licenses to Montanans who are full-time college students in that state, the student may purchase the following for one-half of the cost:*

(a)(i) one of the following:

- (i)(A) a Class B-10 nonresident big game combination license;
- (ii)(B) a Class B-11 nonresident deer combination license; or
- (iii)(C) a nonresident elk-only combination license;
- (b)(ii) if available:
  - (i)(A) a Class B-8 nonresident deer B tag; and
  - (ii)(B) a Class B-12 nonresident antlerless elk B tag license.

(b) if the student's state of residence offers resident-rate licenses to Montanans who are full-time college students in that state and as long as a drawing for the equivalent resident license is not required, the student may purchase for the same price as the equivalent resident license:

(i) (A) any of the following:

- (I) a Class B-30 nonresident college student fishing license;
- (II) a Class B-31 nonresident college student upland game bird license;
- (III) a Class B-32 nonresident college student deer A tag; and
- (IV) a Class B-33 nonresident college student elk tag; or
- (B) a Class B-34 nonresident college student big game combination license

that entitles the holder to all the privileges of the licenses listed in subsection (1)(b)(i)(A) and a nonresident wildlife conservation license;

- (ii) a Class B-35 nonresident college student migratory game bird license;
- (iii) a Class B-36 nonresident college student turkey tag;
- (iv) a Class B-37 nonresident college student deer B tag; and
- (v) a Class B-38 nonresident college student antlerless elk B tag.

(2) (a) The holder of a license purchased pursuant to this section is entitled to use that license to hunt or fish, as relevant, and to possess the carcass of the species taken in the manner prescribed by the rules and regulations of the commission and department.

(b) A student may not purchase a license pursuant to this section for more than 4 license years.

(2)(3) (a) To qualify for a license issued pursuant to ~~subsection (1)~~ this section, a student may not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country and must:

(a)(i) be currently enrolled as a full-time undergraduate student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time; or

(ii) be currently enrolled as a full-time graduate student at a postsecondary educational institution in the state, with 9 credits or more being considered full-time unless otherwise defined by the academic department in which the student is enrolled; or

(b)(iii) (i)(A) have a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(ii)(B) have a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has a high school equivalency diploma issued in Montana; and

(iii)(C) be currently enrolled as a full-time student at a postsecondary educational institution in another state.

(b) A student is not eligible to receive a license pursuant to this section if the student is enrolled in a degree program that is exclusively delivered online.

(3)(4) Application for a license issued pursuant to this section 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.

(4)(5) Class B-10 and Class B-11 licenses issued pursuant to this section are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses issued pursuant to this section are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.”

**Section 2. Effective date.** [This act] is effective March 1, 2022.

Approved April 30, 2021

## CHAPTER NO. 369

[HB 665]

AN ACT PROVIDING THAT BOOKING PHOTOGRAPHS ARE PUBLIC CRIMINAL JUSTICE INFORMATION; REQUIRING A CRIMINAL JUSTICE AGENCY TO CHARGE A CLERKING FEE FOR RELEASE OF CERTAIN BOOKING PHOTOGRAPHS; AMENDING SECTIONS 44-5-103 AND 44-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 44-5-103, MCA, is amended to read:

**“44-5-103. Definitions.** As used in this chapter, the following definitions apply:

(1) “Access” means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) “Administration of criminal justice” means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) “Confidential criminal justice information” means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and *investigative or intelligence* photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) “Criminal history record information” means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising from complaints, indictments, or informations; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless the information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) “Criminal intelligence information” means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information, including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) (a) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.

(b) The term does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice, including a governmental fire agency organized under Title 7, chapter 33, or a fire marshal who conducts criminal investigations of fires;

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) (a) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency.

(b) The term does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or if criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or disorder;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;  
 (viii) a nolo contendere plea;  
 (ix) deferred prosecution or diversion;  
 (x) bond forfeiture;  
 (xi) death;  
 (xii) release as a result of a successful collateral attack;  
 (xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

(a) information made public by law;

(b) information of court records and proceedings;

(c) information of convictions, deferred sentences, and deferred prosecutions;

(d) information of postconviction proceedings and status;

(e) information originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records, *including booking photographs*;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

**Section 2.** Section 44-5-301, MCA, is amended to read:

**"44-5-301. Dissemination of public criminal justice information.**

(1) There are no restrictions on the dissemination of public criminal justice information.

(2) (a) All public criminal justice information is available from the department or the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents must be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

(b) (i) A criminal justice agency shall charge a clerking fee of \$100 for the release of a booking photograph prior to the termination of criminal proceedings

*against the individual depicted in the photograph. This fee may be waived in the case of extenuating circumstances.*

*(ii) If a person is convicted of an offense related to the arrest for which the booking photograph was taken, the criminal justice agency may not charge a clerking fee for the release of the booking photograph.”*

**Section 3. 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.

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

Approved April 30, 2021

## CHAPTER NO. 370

[SB 203]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 11, OF THE MONTANA CONSTITUTION TO EXPLICITLY INCLUDE ELECTRONIC DATA AND COMMUNICATIONS IN SEARCH AND SEIZURE PROTECTIONS.

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

**Section 1.** Article II, section 11, of The Constitution of the State of Montana is amended to read:

“**Section 11. Searches and seizures.** The people shall be secure in their persons, papers, *electronic data and communications*, homes, and effects from unreasonable searches and seizures. No warrant to search any place, or to seize any person or thing, or to access *electronic data or communications* shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.”

**Section 2. Two-thirds vote required.** Because [section 1] is a legislative proposal to amend the constitution, Article XIV, section 8, of the Montana constitution requires an affirmative roll call vote of two-thirds of all the members of the legislature, whether one or more bodies, for passage.

**Section 3. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2022 by printing on the ballot the full title of [this act] and the following:

- YES on Constitutional Amendment \_\_\_\_.
- NO on Constitutional Amendment \_\_\_\_.

Approved May 5, 2021

## CHAPTER NO. 371

[HB 206]

AN ACT GENERALLY REVISING TUITION AND IN-STATE TREATMENT LAWS; ESTABLISHING A TUITION PER-ANB AMOUNT THAT REFLECTS UPDATES TO THE SCHOOL FUNDING FORMULA; REQUIRING THE DISTRICT OF RESIDENCE TO CONTRIBUTE A PORTION OF THE TUITION COSTS FOR PUPILS PLACED IN GROUP HOMES OR FOSTER CARE AND FOR A PORTION OF THE EDUCATIONAL COSTS OF ELIGIBLE CHILDREN IN IN-STATE CHILDREN'S PSYCHIATRIC HOSPITALS AND IN-STATE RESIDENTIAL TREATMENT FACILITIES; REVISING FUNDING

FOR THE EDUCATIONAL COSTS OF ELIGIBLE CHILDREN IN IN-STATE CHILDREN'S PSYCHIATRIC HOSPITALS AND IN-STATE RESIDENTIAL TREATMENT FACILITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 20-5-323, 20-5-324, 20-7-403, 20-7-420, 20-7-435, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 20-5-323, MCA, is amended to read:

**"20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (2) through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the ~~per-ANB maximum rate established in 20-9-306~~ *tuition per-ANB amount* for the year of attendance.

(2) ~~The~~ *Except for the tuition paid by the district of residence under 20-5-324(2)(b),* the tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils. *The rules must provide:*

(a) *that tuition amounts must be reduced by the funding generated by the district of attendance due to the child's attendance; and*

(b) *an option for tuition set at the actual unique costs of providing a free appropriate public education.*

(3) *The state-paid* tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) *in addition to the tuition paid by the district of residence under 20-5-324(2)(b)* for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement ~~with the district of attendance~~ for the tuition cost;

(b) for a Montana resident student, ~~80% of the maximum per-ANB rate established in 20-9-306~~ *120% of the tuition per-ANB amount*, received in the year for which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this section may not exceed \$2,500 per ~~ANB student~~.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost for each student in the child's district of residence or 35 cents a mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year.

(7) *As used in this section, "tuition per-ANB amount" means the applicable per-ANB maximum rate established in 20-9-306, plus the sum of:*

- (a) *the data for achievement payment rate under 20-9-306;*
- (b) *the Indian education for all payment rate under 20-9-306; and*
- (c) *the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321."*

**Section 2.** Section 20-5-324, MCA, is amended to read:

**"20-5-324. Tuition report and payment provisions.** (1) ~~Following the close of each school fiscal year,~~ *In order to be eligible to receive payment under subsection (2),* the trustees of a district shall report to the superintendent of public instruction *by June 30 the following information for the concluding school fiscal year:*

(a) the name and district of residence of each child who attended a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e) ~~in the previous school year;~~

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

(d) the names, districts of attendance, and amount of tuition paid by the district for resident students attending public schools out of state ~~in the previous school year;~~ and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools ~~in the previous school year.~~

(2) (a) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

~~(a)~~(i) *except as provided in subsection (2)(b) of this section,* pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c), prorated for the actual days of enrollment;

~~(b)~~(ii) determine the total per-ANB entitlement for which the district of residence would have been eligible if the students reported in subsections (1)(d) and (1)(e) had been enrolled in the resident district in the prior year; and

~~(c)~~(iii) reimburse the district of residence for the state portion of the per-ANB entitlement for each student *reported in subsections (1)(d) and (1)(e),* not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.

(b) *The district of residence for each child reported under the provisions of subsection (1)(a) of this section shall pay the district of attendance twice the maximum tuition rate under 20-5-323(1) prorated for the actual days of enrollment. The superintendent of public instruction is only responsible for any additional tuition amount pursuant to 20-5-323(2) and (3).*

(3) *By August 15 following the year of attendance, the district of attendance shall notify the district of residence of an obligation under subsection (2)(b). By December 31 following the year of attendance, the district of residence shall pay at least one-half of any tuition obligation established under subsection (2)(b)*

*out of the money realized to date from the district tuition fund levy or from the district's general fund or any other legally available fund in the discretion of the trustees. The remaining tuition obligation must be paid by June 15 of the school fiscal year following the year of attendance.*

~~(3) In order to be eligible to receive payment under subsection (2), the trustees of the district of attendance shall submit the report required by subsection (1) within the school fiscal year following the year of attendance.~~

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) (i) When a child has approval to attend a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance the tuition amount from the levy authorized to support the district tuition fund *or from the district's general fund or any other legally available fund in the discretion of the trustees* and any transportation amount from the levy authorized to support the transportation fund *or from the district's general fund or any other legally available fund in the discretion of the trustees.*

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under subsection (5)(a)(i) ~~out of the money realized to date from the district tuition or transportation fund levy.~~ The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

(iii) In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil, a school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in the district. The amount of the levy imposed for the costs associated with educating each child with a disability under this subsection (5)(a)(iii) is limited to the actual cost of service under the child's individualized education program minus:

- (A) the student's state special education payment;
- (B) the student's federal special education payment;
- (C) the student's per-ANB amount;
- (D) the prorated portion of the district's basic entitlement for each qualifying student; and
- (E) the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for each qualifying student.

(b) When a child has approval to attend a school outside the child's district of residence because of a parent's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

(6) (a) Except as provided in subsections (6)(b) through (6)(d), the district shall credit tuition receipts to the district general fund and transportation receipts to the transportation fund.

(b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(c) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(7) The reimbursements paid under subsection (2)(c)(a)(iii) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

(8) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422.”

**Section 3.** Section 20-7-403, MCA, is amended to read:

**“20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying a child with a disability;

(5) preparing appropriate technical assistance documents to assist local districts in implementing special education policies and procedures;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in identifying the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;

(8) providing technical assistance to district superintendents, principals, teachers, and trustees;

(9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child’s records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, including a homeless child with a disability, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the

other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

(12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

~~(13) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting, pursuant to 20-7-435, with a public school district or a private residential facility for the provision of appropriate educational opportunity a free appropriate public education for a child placed in an in-state residential treatment facility or children's psychiatric hospital, including the provision of a free appropriate public education for a child with a disability."~~

**Section 4.** 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.

(2) The superintendent of public instruction is financially responsible for a portion of 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)~~(3) 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 5.** Section 20-7-435, MCA, is amended to read:

**"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children.** (1) (a) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for an

~~eligible child with a disability that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.~~

~~(b) As used in this section, "appropriate educational opportunity" means:~~

~~(i) for an eligible child without a disability;~~

~~(A) if provided by a nonpublic school, an education program provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109; and~~

~~(B) if provided by a public school, an education program consistent with accreditation standards provided for in 20-7-111; and~~

~~(ii) for an eligible child with a disability, a free appropriate public education consistent with state standards for the provision of special education and related services.~~

~~(2) The~~ From appropriations provided for the purposes of this section, the superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) (a) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

~~(a)—ensure establish a daily rate per eligible child for each hospital or facility that reflects actual documented costs of providing an appropriate educational opportunity at that hospital or facility and that excludes the cost of services that are eligible for reimbursement under any provision of state or federal law or an insurance policy the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility not to exceed 100% of the tuition per-ANB amount as defined in 20-5-323 divided by 180.~~

~~(b) For each eligible child, the superintendent of public instruction shall pay the hospital or treatment facility the daily rate under subsection (3)(a).~~

~~(c) For each eligible child, the eligible child's school district of residence shall pay the hospital or treatment facility a daily rate of 40% of the tuition per-ANB amount as defined in 20-5-323 divided by 180 in a manner prescribed by the superintendent of public instruction. The district of residence shall finance the tuition amount from the levy authorized to support the district tuition fund or from the district's general fund or any other legally available fund in the discretion of the trustees.~~

~~(d) An eligible child whose appropriate educational opportunity is provided under subsection (5)(a) or (5)(b) of this section may not receive funding under this subsection (3).;~~

~~(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;~~

~~(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;~~

~~(d) provide funding for allowable costs according to a proration based on average daily membership.~~

(4) A supplemental education fee or tuition, *beyond those authorized under this section*, may not be charged for an eligible Montana child who receives ~~inpatient treatment and~~ an education under contract with an in-state children's psychiatric hospital or residential treatment facility *under subsection (3) or as provided under subsection (5)*.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in accordance with ~~20-5-109 or a free appropriate public education under the provisions of this part~~ *appropriate educational opportunity* for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall, *from appropriations provided for the purposes of this section*:

(a) *provide for an appropriate educational opportunity for the eligible child utilizing qualified specialists who are employees of the office of public instruction or under contract with the office of public instruction for the purposes of this section. The eligible child's district of residence shall reimburse the office of public instruction at the daily rate established in subsection (3)(c). The district of residence may finance the reimbursement from the levy authorized to support the district tuition fund; or*

(b) *negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for opportunity for eligible children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education to be paid to the district of attendance by the office of public instruction and the amount to be paid by the eligible child's district of residence are determined as provided in 20-5-323 and 20-5-324 for out-of-district attendance agreements approved under 20-5-321(1)(d) and (1)(e).*

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) *must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and*

(b) *are not subject to the budget limitations in 20-9-308.*

(7) *The superintendent of public instruction may distribute funds appropriated for contracts with in-state children's psychiatric hospitals or residential treatment facilities under subsection (2) to public school districts for the purpose of supporting educational programs for children with significant behavioral or physical needs."*

**Section 6.** Section 20-9-343, MCA, is amended to read:

**"20-9-343. Definition of and revenue for state equalization aid.**

(1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) *distribution to the public schools for guaranteed tax base aid, BASE aid, and state debt service assistance; and*

(b) ~~negotiated payments authorized under 20-7-420(3) up to \$500,000 a biennium.~~

(2) *The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid,*

BASE aid for the BASE funding program, *and* state debt service assistance; ~~and negotiated payments authorized under 20-7-420(3).~~

(3) The following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) subject to 20-9-516(2)(a), interest and income money described in 20-9-341 and 20-9-342; and

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.”

**Section 7. Effective date.** [This act] is effective July 1, 2021.

**Section 8. Applicability.** [This act] applies to school fiscal years beginning on or after July 1, 2021.

Approved May 3, 2021

## CHAPTER NO. 372

[HB 423]

AN ACT GENERALLY REVISING LAWS RELATED TO SCREENING NEWBORNS FOR GENETIC OR METABOLIC DISORDERS; CREATING A NEWBORN SCREENING COMMITTEE; REQUIRING THE DEPARTMENT TO ADD NEW CONDITIONS TO THE NEWBORN SCREENING PANEL WHEN CERTAIN CONDITIONS ARE MET; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 50-19-203, MCA.

WHEREAS, the Montana Legislature has become aware that there are newborn screening tests available and treatments that can improve quality of life in conjunction with early diagnosis for certain lysosomal storage disorders including MPS I, Pompe, Gaucher, Fabry, and Krabbe diseases; and

WHEREAS, it is the intent of the Montana Legislature that these disorders be added to the newborn screening panel provided for each infant born in the State of Montana and that additional diseases be added to the panel in response to technological advancements; and

WHEREAS, to ensure that MPS I, Pompe, Gaucher, Fabry, and Krabbe diseases are considered for addition to the newborn screening panel and that other diseases are added as new testing and treatment methods become available, the creation of an advisory committee and protocols for adding new diseases to the newborn screening panel is necessary.

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

**Section 1. Newborn screening advisory committee – membership – duties.** (1) There is a newborn screening advisory committee. The committee consists of 12 members appointed by the director of the department.

(2) (a) The director shall appoint the following voting members:

(i) two members who are persons affected by or family members of a person affected by a disorder tested for pursuant to 50-19-203;

(ii) two members who are physicians or nurse practitioners who are board-certified in obstetrics, pediatrics, family medicine, or neonatology;

(iii) one member who is a representative of a birthing center;

(iv) one member who is a representative of medicaid or the insurance industry;

(v) one member who is a representative of an advocacy association regarding newborns with medical conditions or rare disorders;

(vi) one member who is a medical geneticist or who has at least 5 years of experience working in a testing laboratory; and

(vii) one member who works in a tribal health care system.

(b) The director shall appoint the following department employees as nonvoting members:

- (i) the chief medical director;
- (ii) a representative of the newborn screening program; and
- (iii) a representative of the laboratory services bureau.

(3) (a) Except as provided in subsection (3)(b), each voting committee member shall serve a staggered 3-year term and is subject to reappointment for one succeeding term.

(b) The director shall appoint the first eight voting members to an initial term of 1, 2, or 3 years so that the terms of no more than four members expire in any given year.

(4) The committee shall meet at least two times each year.

(5) The committee shall report its findings to the director at least once a year, if applicable, including providing recommendations that the department initiate rulemaking to add an additional metabolic or genetic disorder to the newborn screening protocol. In making recommendations to the department, the committee shall use federally recognized national standards for newborn screening, including the recommended uniform screening panel developed by the health resources and services administration of the United States department of health and human services.

(6) Members of the committee are not entitled to compensation for their services, but they are entitled to a mileage allowance, as provided in 2-18-503, and travel and meal expenses, as provided in 2-18-501 and 2-18-502.

(7) The committee shall gather information on recent developments in testing technology, investigate staff and equipment requirements of new tests, and perform other activities related to newborn screening. The committee may make recommendations to the director regarding conditions that should be added to the newborn screening panel.

(8) The committee is attached to the department of public health and human services for administrative purposes, and the department shall provide staff support to the committee.

(9) The committee shall give priority to reviewing Krabbe disease.

**Section 2.** Section 50-19-203, MCA, is amended to read:

**“50-19-203. Newborn screening and followup for metabolic and genetic disorders.** (1) A person in charge of a facility in which a child is born or a facility in which a newborn is provided care or a person responsible for the registration of the birth of a newborn shall ensure that each newborn is administered tests designed to detect inborn metabolic and genetic disorders as required under rules adopted by the department. *The department shall initiate rulemaking to add testing for a new metabolic or genetic disorder to the newborn screening panel on occurrence of the following:*

(a) *a reliable test or series of tests for screening newborns for a genetic or metabolic condition using dried blood spots or other testing is developed and registered with the United States food and drug administration;*

(b) *quality assurance testing methodology is available and approved by the United States centers for disease control and prevention;*

(c) *necessary materials for the testing and quality assurance testing are commercially available; and*

(d) *the newborn screening advisory committee has recommended that the test be added to the newborn screening protocol.*

(2) The tests must be done by an approved laboratory. An approved laboratory must be the laboratory of the department or a laboratory approved by the department.

(3) The department shall contract with one or more providers qualified to provide followup services, including counseling and education, for children and parents of children identified with metabolic or genetic disorders to ensure the availability of followup services.”

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 19, part 2, and the provisions of Title 50, chapter 19, part 2, apply to [section 1].

Approved May 4, 2021

## CHAPTER NO. 373

[HB 478]

AN ACT REVISING DRIVING UNDER THE INFLUENCE LAWS; PROVIDING THAT BREATH ANALYSIS IS INCLUDED IN THE POSSIBLE EXPENDITURES FOR THE BLOOD-DRAW SEARCH WARRANT PROCESSING ACCOUNT; AND AMENDING SECTION 61-8-402, MCA.

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

**Section 1.** Section 61-8-402, MCA, is amended to read:

**“61-8-402. Implied consent – blood or breath tests for alcohol, drugs, or both – refusal to submit to test – administrative license suspension.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person’s blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person’s body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage;

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(C) in violation of 61-8-465.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5), but the officer shall, on behalf of the department, immediately seize the person’s driver’s license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions

set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (8).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

(6) (a) An arrested person who refuses to submit to one or more tests as provided in subsection (4) shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (6)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (6) must be deposited in the account and may be used only for the purpose of providing forensic analysis of a driver's blood or *breath* to determine the presence of alcohol or drugs.

(c) The department shall adopt rules establishing procedures for the collection, distribution, and strict accountability of any funds received pursuant to this section.

(7) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(8) (a) Except as provided in subsection (8)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (8)(b).

(9) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(10) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant

to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(11) A suspension under this section is subject to review as provided in this part.

(12) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(13) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

**Section 2. Coordination instruction.** If both Senate Bill No. 365 and [this act] are passed and approved, then [section 16(3)(b) of Senate Bill 365] must be amended as follows:

"(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood or breath to determine the presence of alcohol or drugs."

Approved May 4, 2021

## CHAPTER NO. 374

[SB 219]

AN ACT PROVIDING FOR THE RELEASE OF PHONE LOCATION INFORMATION TO A LAW ENFORCEMENT AGENCY OR AGENT OF A PUBLIC SAFETY ANSWERING POINT IN AN EMERGENCY; AND AMENDING SECTION 27-1-735, MCA.

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

### **Section 1. Providing phone location information in emergency.**

(1) At the request of a law enforcement agency officer or employee or other agent of a public safety answering point on behalf of a law enforcement agency who is acting in the course of the official duties of the officer or agent, a commercial mobile service as defined in 47 U.S.C. 332 shall provide, subject to any limitations under applicable federal law, available phone location information of a telecommunications device without delay if the officer or agent asserts:

(a) that the device was used to place a 9-1-1 call requesting emergency assistance; or

(b) reasonable suspicion that the device is in the possession of an individual who is involved in an emergency situation that involves risk of death or serious physical harm.

(2) If a law enforcement agency officer or an employee or other agent of a public safety answering point acting on behalf of an officer submits a request for location information to a commercial mobile service under subsection (1), the law enforcement agency employing the officer shall maintain a record of the request that includes each of the following:

(a) the name of the officer or agent making the request or, in the case of a request made by an agent, the name of the officer on whose behalf the agent is acting;

(b) a description of the request that explains the need for disclosure of location information; or

(c) a declaration that disclosure of location information is needed based on the conditions described in subsection (1).

(3) A commercial mobile service may establish protocols by which the commercial mobile service voluntarily discloses phone location information.

(4) The department shall obtain direct contact information from all commercial mobile services authorized to do business in this state to facilitate a request from a law enforcement agency or a public safety answering point on behalf of a law enforcement agency for phone location information under this section. All commercial mobile services shall inform the department of any changes to their direct contact information. The department shall disseminate the direct contact information to each public safety answering point in this state.

**Section 2.** Section 27-1-735, MCA, is amended to read:

**“27-1-735. Emergency communications systems – lawful release of information.** (1) It is lawful for a telephone company or telecommunications provider to release in good faith to personnel of emergency communications systems information not in the public record, including but not limited to unpublished or unlisted telephone numbers, ~~and~~ subscribers’ names and physical addresses, *and phone location information pursuant to [section 1]*.

(2) A local exchange telephone company registered as a Montana telecommunications service provider, as provided in 69-3-805, or a provider of commercial mobile service, as defined in 47 U.S.C. 332(d)(1), that provides emergency communications systems and related services and its employees and agents are not liable in tort to any person for damages alleged to have been caused by the design, development, installation, maintenance, or provision of emergency communications systems or related services unless the acts or omissions of the entities or persons constitute gross negligence or willful or wanton misconduct. This subsection does not provide immunity from liability in a products liability action.

(3) For the purposes of this section, “subscribers” means persons, partnerships, corporations, or other entities acquiring telecommunications services from a telecommunications provider. There is one subscriber for each billed line of a telecommunications provider.”

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 4, and the provisions of Title 10, chapter 4, apply to [section 1].

Approved May 3, 2021

## CHAPTER NO. 375

[SB 237]

AN ACT ELIMINATING THE COMMUNITY RENEWABLE ENERGY PROJECT REQUIREMENT FROM MONTANA’S RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, 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.

~~(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.~~

~~(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 25 megawatts in total calculated nameplate capacity; or~~

~~(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.~~

~~(5)(3) (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.~~

~~(6)(4) “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.~~

~~(7)(5) “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)(6) “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)(7) “Electric generating resource” means any plant or equipment used to generate electricity by any means.~~

~~(10)(8) “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, or a hydroelectric project expansion referred to in subsection ~~(10)(d)(iii)(8)(d)(iii)~~, any of which 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;~~

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less; or

(iii) is an expansion of an existing hydroelectric project that commences construction and increases existing generation capacity on or after October 1, 2013. Engineering estimates of the average incremental generation from the increase in existing generation capacity must be submitted to the commission for review. The commission shall determine an average annual incremental generation that will constitute the eligible renewable resource from the capacity expansion, subject to further revision by the commission in the event of significant changes in stream flow or dam operation.

(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, including wood pieces that have been treated with chemical preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility that has a nameplate capacity of 5 megawatts or less;

(h) hydrogen derived from any of the sources in this subsection ~~(10)~~ (8) for use in fuel cells; and

(i) the renewable energy fraction from:

(i) the sources identified in this subsection ~~(10)~~ (8) of electricity production from a multiple-fuel process with fossil fuels;

(ii) flywheel storage as defined in 15-6-157(4)(d);

(iii) hydroelectric pumped storage as defined in 15-6-157(4)(e);

(iv) batteries; and

(v) compressed air derived from any of the sources in this subsection ~~(10)~~

(8) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

~~(11) "Local owners" means:~~

~~(a) Montana residents;~~

~~(b) general partnerships of which all partners are Montana residents;~~

~~(c) business entities organized under the laws of Montana that:~~

~~(i) have less than \$50 million of gross revenue;~~

~~(ii) have less than \$100 million of assets; and~~

~~(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;~~

~~(d) Montana nonprofit organizations;~~

~~(e) Montana-based tribal councils;~~

~~(f) Montana political subdivisions or local governments;~~

~~(g) Montana-based cooperatives other than cooperative utilities; or~~

~~(h) any combination of the individuals or entities listed in subsections ~~(11)~~(a) through ~~(11)~~(g).~~

~~(12)(9) "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.~~

~~(13)(10) "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.~~

~~(14)(11) "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)(12)~~ “Renewable energy fraction” means the proportion of electricity output directly attributable to electricity and associated renewable energy credits produced by one of the sources identified in subsection (10).

~~(16)(13)~~ “Seasonality” means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

~~(17)(14)~~ “Small customer” means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

~~(18)(15)~~ “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.

~~(19)(16)~~ “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 69-3-2004, MCA, is amended to read:

**“69-3-2004. Renewable resource standard – administrative penalty – waiver.** (1) Except as provided in 69-3-2007 and subsections ~~(11) through (14)~~ (9) *through (12)* of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections *subsection (2) through (4)* of this section.

~~(2)~~ In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

~~(3)~~ (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier, except as provided in subsections (13) and (14), shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

~~(b)~~ Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

~~(c)~~ Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility’s retail sales of electrical energy in Montana in the calendar year 2011.

~~(4)(2)~~ (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility and competitive electricity supplier, except as provided in subsections ~~(13) (11)~~ and ~~(14) (12)~~, shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

~~(b)~~ (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

~~(ii)~~ In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

~~(c)~~ Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility’s proportion of the total retail sales of electrical energy by public utilities in Montana in the calendar year 2014.

~~(5)~~(3) (a) In complying with the standards required under ~~subsections subsection (2) through (4)~~, a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.

(b) The standards in ~~subsections subsection (2) through (4)~~ must be calculated on a delivered-energy basis after accounting for any line losses.

~~(6)~~(4) A public utility or competitive electricity supplier has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

~~(7)~~(5) (a) In order to meet the standards established in ~~subsections subsection (2) through (4)~~, a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of ~~(7)(a)(i) (5)(a)(i)~~ and ~~(7)(a)(ii) (5)(a)(ii)~~.

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in ~~subsections subsection (2) through (4)~~.

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in ~~subsections subsection (2) through (4)~~.

~~(8)~~(6) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in ~~subsections subsection (2) through (4)~~.

~~(9)~~(7) If a public utility or competitive electricity supplier exceeds a standard established in ~~subsections subsection (2) through (4)~~ in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

~~(10)~~(8) Except as provided in ~~subsections (11) and (12) (9) and (10)~~, if a public utility or competitive electricity supplier is unable to meet the standards established in ~~subsections subsection (2) through (4)~~ in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

~~(11)~~(9) A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in ~~subsections subsection (2) through (4)~~ and the penalties levied under ~~subsection (10) (8)~~. The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

~~(12)~~(10) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in ~~subsections~~ *subsection (2) through (4)*.

(b) The exemption provided for in ~~subsection (12)(a)~~ *(10)(a)* is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract.

~~(13)~~(11) A public utility that served 50 or fewer retail customers in Montana on December 31, 2012, is exempt from the requirements of ~~subsections~~ *subsection (2) through (4)*.

~~(14)~~(12) (a) A competitive electricity supplier with four or fewer small customers in Montana is exempt from the requirements of ~~subsections~~ *subsection (2) through (4)*.

(b) For the purposes of determining the number of small customers served by a competitive electricity supplier, an entity that purchases electricity for commercial or industrial use and does not resell electricity to others is one small customer regardless of the number of its metered locations.”

**Section 3.** 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;

(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 18-2-414, 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) ~~June 1, 2013, for the standard required in 69-3-2004(4); and~~
- (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 4.** Section 69-3-2006, MCA, is amended to read:

**“69-3-2006. Commission authority – rulemaking authority.**

(1) The commission has the authority to generally implement and enforce the provisions of this part.

(2) The commission shall adopt rules before June 1, 2006, to:

(a) select a renewable energy credit tracking system to verify compliance with this part;

(b) establish a system by which renewable resources become certified as eligible renewable resources;

(c) define the process by which waivers from full compliance with this part may be granted;

(d) establish procedures under which contracts for eligible renewable resources and renewable energy credits may receive advanced approval;

(e) define the requirements governing renewable energy procurement plans and annual reports; and

(f) generally implement and enforce the provisions of this part.

(3) The commission may adopt rules to ensure that the calculation of energy generation and the renewable energy credits for eligible renewable resources under 69-3-2003(10)(d)(iii)(8)(d)(iii) reflects the actual electrical production from the expansion as typically reduced by seasonal water conditions.”

**Section 5.** 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 15-30-2101.

(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); or

(b) ~~a community renewable energy project as defined in 69-3-2003(4)(a);~~  
or

(c) an alternative renewable energy source as defined in 15-6-225.”

**Section 6. Existing projects and contracts – grandfather clause.**

[This act] does not affect a public utility’s continued recovery of costs, or rate base treatment of investment, associated with any existing community renewable energy project and may not be construed to alter, amend, diminish, or invalidate rights or duties governed by a contract, agreement, or lease entered into prior to [the effective date of this act].

**Section 7. 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 8. Effective date.** [This act] is effective on passage and approval.

**Section 9. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any application pending or commenced before the public service commission prior to [the effective date of this act].

Approved May 3, 2021

## CHAPTER NO. 376

[SB 265]

AN ACT REQUIRING VENUES FOR ARBITRATION IN ELECTRICAL GENERATION DISPUTES THAT OCCUR WITHIN MONTANA; PROVIDING STANDARDS FOR ARBITRATION PANELS IN ELECTRICAL GENERATION DISPUTES; AMENDING SECTION 27-5-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, electrical generation facilities located in Montana have significant implications for the economy, environment, and health and welfare of Montana consumers; and

WHEREAS, the Legislature, mindful of its constitutional obligations under Article II, section 16, of the Montana Constitution, enacted section 27-5-323, MCA, to ensure Montana residents have a right to arbitrate in Montana; and

WHEREAS, arbitration of disputes concerning Montana electrical generation facilities outside of Montana threatens Montana’s laws, policies, and the interests of Montana in securing and maintaining a reliable source of electricity.

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

**Section 1.** Section 27-5-323, MCA, is amended to read:

**“27-5-323. Venue.** (1) An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if the adverse party does not have a residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. An agreement concerning venue involving a resident of this state is not valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel’s signature on the agreement.

(2) (a) *An agreement concerning venue involving an electrical generation facility in this state is not valid unless the agreement requires that arbitration occur within the state before a panel of three arbitrators selected under the Uniform Arbitration Act unless all parties agree in writing to a single arbitrator.*

(b) *For the purposes of this subsection, “electrical generation facility” has the meaning provided in 15-24-3001.”*

**Section 2. 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 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 applications made on or after January 1, 2021.

Approved May 3, 2021

## CHAPTER NO. 377

[SB 266]

AN ACT REVISING UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN THE CONDUCT OF TRADE OR COMMERCE TO INCLUDE CERTAIN ACTIONS RELATED TO THE OPERATION AND MAINTENANCE OF AN ELECTRICAL GENERATION FACILITY; PROVIDING THE DEPARTMENT OF JUSTICE WITH THE AUTHORITY TO TAKE ACTION IN RESPONSE TO CERTAIN ACTS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, electrical generation facilities located in Montana have significant implications for the economy, environment, and health and welfare of Montana consumers; and

WHEREAS, closure of electrical generation facilities without the unanimous consent of all co-owners threatens the reliable supply of electricity for Montanans; and

WHEREAS, failure or refusal to fund operations of Montana electrical generation facilities by facility owners without the consent of all owners threatens the safety of workers at the facility, threatens Montana’s interest in environmental remediation of the facility, and threatens the reliable supply of electricity for Montana consumers; and

WHEREAS, electrical generation facility owners who fail to fund their share of operating costs without the unanimous consent of all co-owners or seek closure of an electrical generation facility without the unanimous consent of all co-owners of the facility place on Montana local government units and Montana electricity consumers the burdens of disruption in facility operations or closure of the facility; and

WHEREAS, Montana statute prohibits unfair or deceptive acts or practices in the conduct of trade or commerce in accordance with section 30-14-103, MCA, and provides for civil action by the Department of Justice to enforce compliance with statute and for temporary, preliminary, and permanent injunctive relief and civil fine.

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

**Section 1. Definitions.** As used in [section 2] and this section, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Department” means the department of justice.

(2) “Electrical generation facility” has the meaning provided for in 15-24-3001.

(3) “Generating unit” means an individual unit of an electrical generation facility located in the state.

(4) (a) “Operating costs” means the costs to construct, operate, and maintain the electrical generation facility in accordance with prudent utility practices.

(b) The term includes, without limitation, expenditures for capital improvements or replacements, maintenance activities, operations activities, environmental remediation, and pension and other employee benefits.

(5) “Person” means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) (a) “Prudent utility practice” means, at any particular time, any of the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior to practice or approval, or any of the practices, methods, or acts, which, in the exercise of reasonable judgement in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition.

(b) The term is not limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts.

(c) The term also includes those practices, methods, and acts that are required in accordance with applicable laws, final orders, or regulations by regulatory agencies with jurisdiction.

**Section 2. Unfair or deceptive acts or practices – ownership agreement.** (1) (a) The failure or refusal of an owner of a jointly owned electrical generation facility in the state to fund its share of operating costs associated with a jointly owned electrical generation facility is an unfair or deceptive act or practice in the conduct of trade or commerce in accordance with 30-14-103.

(b) Conduct by one or more owners of a jointly owned electrical generation facility in the state to bring about permanent closure of a generating unit of a facility without seeking and obtaining the consent of all co-owners of a generating unit is an unfair or deceptive act or practice in the conduct of trade or commerce in accordance with 30-14-103.

(2) (a) As an exclusive remedy for a violation of this section, whenever the department has reason to believe that a person is using, has used, or is about to knowingly use any method, act, or practice provided for in subsection (1) as an unfair or deceptive act or practice in the conduct of trade or commerce within the meaning of 30-14-103 and that proceeding would be in the public interest, the department may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the unlawful method, act, or practice after giving appropriate notice to that person.

(b) In an action brought under this section, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by this section, the department may, on petition to the court, recover on behalf of the state a civil fine of not more than \$100,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(3) There is no implied private right of action for a violation of this section, either under this section or in law.

(4) All legal actions under this section must be brought in the county in which the electrical generation facility is located.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [sections 1 and 2].

**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. 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 actions taken by an owner on or after January 1, 2021.

Approved May 3, 2021

## CHAPTER NO. 378

[HB 131]

AN ACT REQUIRING THE SALE OF LEASED CABIN OR HOME SITES ON STATE WATER PROJECT LANDS IF REQUESTED BY A LESSEE OR IMPROVEMENT OWNER; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 85-1-811, MCA.

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

**Section 1. Sale of leased cabin or home sites – rulemaking.** (1) (a) Subject to subsection (7), the department shall make available for sale within a reasonable period of time project lands that are state land cabin or home sites on [the effective date of this act], at the request of a lessee or an improvement owner and with the consent of any mortgagee or other owner of an interest in the cabin or home site improvements. The sale must attain full market value.

(b) The proceeds of any sale of cabin site improvements pursuant to this part must go to the owner of record of the improvements.

(2) The sale of a cabin or home site is exempt from the subdivision laws, except that the development of any new or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(3) The department may adopt rules to ensure the sales process authorized pursuant to [sections 1 and 2] is orderly and attains full market value for the sale of a cabin or home site.

(4) On a sale of a cabin or home site, the department may:

(a) grant a permanent easement across state lands to secure access using current routes; or

(b) convey an appurtenant, nonexclusive easement to the property from the nearest public road if:

(i) the department has authority to grant the easement; and

(ii) the conveyance of the easement does not overburden a right-of-way held by the state.

(5) The appraised value and minimum bid for a cabin or home site must include the value of the easement granted pursuant to subsection (4).

(6) (a) The lessee of the cabin or home site nominated for sale has the preference to match the high bid. If the lessee matches the high bid, bidding is reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale.

(b) The current lessee of the cabin or home site who initiated the sale 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.

(c) For the sale of a cabin or home site, the department shall prepare and assume the cost of the land survey. The department may allow the survey to be paid for in advance by the lessee or the owner of any improvements if the survey is contracted through the department according to department specifications. If the parcel is sold but the purchaser is other than the lessee or the owner of the improvements, the cost of the survey must be included in the actual costs at closing, and the department shall refund the cost of the survey to the former lessee or the owner of the improvements.

(d) The department shall transfer water rights that are appurtenant to the cabin or home site to the purchaser on completion of the sale.

(e) The sale of a cabin or home site is exempt from the provisions of Title 75, chapter 1, parts 1 through 3.

(f) For purposes of this section, "cabin site improvements" has the meaning provided in [section 2].

(7) Before January 1, 2022, the department shall determine what cabin sites would be adversely affected by an expansion of a state water project. Lessees of those lots may not request them to be sold pursuant to this section.

### **Section 2. Valuation of cabin or home sites and improvements.**

(1) (a) Prior to the sale of project lands pursuant to [section 1], the department shall separately determine the full market value of the land and the value of the cabin site improvements existing on the land and the value of any necessary access easement across existing state lands from the nearest public road. The appraisal must be based on comparable sales of nearby existing properties with the hypothetical condition that the state parcel to be sold is accessible for all lawful purposes. The appraisal must determine the raw undeveloped value of the parcel and the value of the cabin site improvements.

(b) (i) In determining the values required by subsection (1)(a), the department shall establish a list of at least two third-party independent appraisers available to conduct the appraisal of the land and the cabin site improvements. The department shall provide a copy of the list to the cabin or home site lessee. The lessee shall provide the department with a list of at least 50% of the appraisers from the department's list. The department shall select the appraiser to conduct the appraisal from the list provided by the lessee.

(ii) The department shall assume the proportionate cost of the appraisal of the state land valuation. The lessee shall assume the proportionate cost of the appraisal of the valuation of the cabin site improvements.

(c) The department shall disclose the results of the appraisal to the cabin or home site lessee of the land for sale and shall give that lessee notice and opportunity for an administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing. The department shall make a final determination on the values of the land and cabin site improvements.

(2) (a) If the lessee consents to the terms and conditions of the proposed sale and the valuation of cabin site improvements, the sale must proceed utilizing the department's final determination of the values, and the lessee is obligated to transfer its interest in the cabin site improvements existing on the cabin or home site lease according to the board's final determination of their value.

(b) Nothing in this section prohibits the lessee from accepting a price for the cabin site improvements existing on the cabin or home site that is less than the department's final determination of value.

(3) For purposes of [sections 1 and 2], “cabin site improvements” includes but is not limited to:

- (a) a home or residence;
- (b) outbuildings and structures;
- (c) sleeping cabins;
- (d) utilities;
- (e) water systems;
- (f) septic systems;
- (g) docks; and
- (h) landscaping.

**Section 3.** Section 85-1-811, MCA, is amended to read:

**“85-1-811. Project lands lease and sales account.** There is established a project lands lease *and sales* account within the state special revenue fund of the state treasury. All *sale proceeds and* lease fees collected under this part must be deposited in the account to pay the department’s costs and expenses in administering this part.”

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 1, part 8, and the provisions of Title 85, chapter 1, part 8, apply to [sections 1 and 2].

Approved May 3, 2021

## CHAPTER NO. 379

[SB 190]

AN ACT REVISING LAWS FOR PROVIDING FOR TIP POOLS; PROVIDING REQUIREMENTS FOR TIP POOLS; PROVIDING THAT EMPLOYERS MAY NOT PARTICIPATE IN THE TIP POOL; PROVIDING NOTICE REQUIREMENTS; DISTINGUISHING COMPULSORY CHARGES FROM TIP POOLS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Tip pools allowed – requirements – prohibitions – compulsory charges distinguished.** (1) An employer may impose a tip pooling arrangement as provided in this section.

(2) A tip pooling arrangement may include employees involved in providing customer service or food preparation, including but not limited to servers, hosts, bussers, dishwashers, cooks, or other employees. This section does not impose a minimum or maximum contribution percentage on mandatory tip pools; however, employees may not be required to contribute to a tip pool more than the amount received in tips.

(3) An employer:

- (a) shall notify its employees of any required tip pooling arrangement;
- (b) may not participate in a tip pool;
- (c) may not include exempt salaried supervisors or managers in a tip

pool. However, an employer does not violate this subsection (3) if the employer, supervisors, or managers keep tips they receive directly from customers based on the service directly provided by them.

(d) may control an employee’s tips only to distribute tips to the employee who received them or when the employer facilitates tip pooling by collecting and distributing tips to employees in a tip pool. An employer that facilitates tip pooling by collecting and redistributing employees’ tips must fully distribute any tips the employer collects no later than the regular payday for the workweek in which the tips were collected. An employer that collects tips

received by the employees to operate a mandatory tip pooling arrangement shall maintain and preserve payroll or other records evidencing tips received and distributed pursuant to the tip pool.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 3, part 2, and the provisions of Title 39, chapter 3, part 2, apply to [section 1].

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

Approved May 3, 2021

## CHAPTER NO. 380

[SB 294]

AN ACT REVISING COUNTY ZONING LAWS; PROVIDING FOR A REFERENDUM TO TERMINATE ZONING DISTRICTS; REMOVING CERTAIN PROTEST PROVISIONS THAT HAVE BEEN INVALIDATED BY THE MONTANA SUPREME COURT; PROVIDING MINIMUM LOT SIZE RESTRICTIONS IN RESIDENTIAL ZONING; AMENDING SECTION 76-2-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Referendum to terminate zoning district.** (1) Real property owners in a zoning district may petition the board of county commissioners to submit a referendum to the registered electors residing in the zoning district to terminate the zoning district. The petition must be in writing and contain the signatures and addresses of 20% or more of the real property owners in the zoning district. The petition requesting a referendum for the termination of a zoning district must be delivered to the county clerk and recorder, who shall endorse on it the date when the petition was received and validate the signatures within 60 days of receipt of the petition. If the petition contains valid signatures of at least 20% of the real property owners within the zoning district, the county clerk and recorder shall notify the county commissioners.

(2) On receipt of a valid petition described in subsection (1), the county commissioners shall submit the referendum to the registered electors residing in the district in an election conducted pursuant to Title 13, chapter 1, part 5.

**Section 2.** Section 76-2-205, MCA, is amended to read:

**“76-2-205. Procedure for adoption of regulations and boundaries.**

The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must:

(a) state:

- (i) the boundaries of the proposed district;
- (ii) the general character of the proposed zoning regulations;
- (iii) the time and place of the public hearing;

(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(b) be posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and

(c) be published once a week for 2 weeks in a newspaper of general circulation within the county.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;
- (d) that for 30 days after first publication of this notice, the board of county commissioners will receive written ~~protests~~ *comments* to on the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the ~~protest comment~~ *comment* period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. ~~However, if 40% of the real property owners within the district whose names appear on the last-completed assessment roll or if real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."~~

**Section 3. Minimum lot size restrictions.** A board of county commissioners may not adopt zoning regulations under this part that require minimum lot sizes in an area zoned for residential use unless:

- (1) the zoning regulation requiring minimum lot sizes is applied to land that is within 3 miles of the limits of an incorporated municipality; or
- (2) the county has adopted a land use map in its growth policy pursuant to 76-1-601(5) that sets forth projected population densities and recommended minimum lot sizes.

**Section 4. Codification instruction.** [Sections 1 and 3] are intended to be codified as an integral part of Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, part 2, apply to [sections 1 and 3].

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

**Section 6. Applicability.** [Sections 1 and 2] apply to zoning districts created pursuant to Title 76, chapter 2, part 2, on or after January 1, 2021.

Approved May 3, 2021

## CHAPTER NO. 381

[SB 372]

AN ACT REVISING DRIVER'S LICENSE LAWS; ALLOWING APPLICANTS FOR DRIVER'S LICENSES TO REQUEST A LICENSE RESTRICTION NOTING A PERSONAL COMMUNICATION LIMITATION OR OTHER

MEDICAL INFORMATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 61-14-201, MCA.

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

**Section 1. Communication restrictions.** At the request of an applicant, and if the applicant expresses to the department a personal communication limitation or other medical information that would be relevant to a peace officer during a traffic stop or to first responders during an emergency, the department may include an appropriate restriction on a license issued to the applicant.

**Section 2.** Section 61-14-201, MCA, is amended to read:

**“61-14-201. Rulemaking authority – driver’s licenses and identification cards.** (1) The department may adopt rules to administer and enforce the provisions of Title 61, chapter 5.

(2) The department may adopt rules governing acceptable methods of proof of identification, including name, date of birth, and authorized presence, that an individual must submit when applying for a license or identification card, including a new, renewal, or replacement license or identification card.

(3) The department may adopt rules governing the determination of the driver’s license expiration date, minimum and maximum license terms, and license renewal requirements for a driver’s license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law.

(4) The department shall adopt rules governing the calculation of grace periods for renewals and the calculation of other time periods established by statute or federal regulation.

(5) The department may adopt rules governing the renewal of a driver’s license by a person in the military assigned to active duty who had a valid Montana driver’s license at the time of entering active duty.

(6) The department shall adopt rules to set the standards for driver license examinations and reexaminations.

(7) The department may adopt rules to set the standards for photographs, certifications, and signature requirements for the issuance of driver’s licenses.

(8) The department shall adopt rules establishing the functional abilities and skills required to exercise ordinary and reasonable control to safely operate a motor vehicle. The rules:

(a) must include operational restrictions based on the driver’s ability and skills;

(b) may direct the design of one or more types of skills tests. A skills test may consist of:

(i) a comprehensive assessment of a person’s functional abilities by means of an actual demonstration of the applicant’s ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person’s functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination.

(c) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction.

(9) The department shall adopt rules establishing vision requirements for a person to safely operate a motor vehicle. The rules:

(a) must include the minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licenses and operational

restrictions based on the visual acuity of an applicant or licensee, including the use of bioptic lenses; and

(b) may include minimum field of vision and depth perception requirements for both unrestricted and restricted licenses.

(10) The rules in subsections (8) and (9):

(a) may take into consideration any nationally recognized standards or recommended practices or standards of other jurisdictions for assessment of a person's functional abilities and skills;

(b) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(c) except as provided in 61-5-105, may not use a person's age or a person's physical or mental disability, limitation, or condition as a justification for the denial of a license.

(11) The department shall adopt rules governing the issuance of a restricted learner license, including when the department may issue a restricted learner license to allow for a driver to practice driving skills.

(12) The department shall adopt rules governing the issuance of a hardship license to a person who is at least 13 years of age and because of individual hardship needs a restricted driver's license, including a person who holds a learner license under 61-5-106. The department must consider, among other criteria, whether a hardship license is needed because the applicant's parent or guardian is not available to accompany the licensee, whether due to employment or circumstances related to the operation of a farm or ranch or because the parent or guardian does not hold a valid driver's license, and the licensee is required to drive to the licensee's school bus stop.

(13) The department may adopt rules governing probationary licenses, including:

(a) issuance to a person whose license has been suspended or revoked or whose license is subject to a discretionary suspension or revocation;

(b) the establishment of restrictions placed on a probationary license;

(c) the expiration of a probationary license;

(d) the cancellation of a probationary license for violating the restrictions on the probationary license or for another law violation; and

(e) the issuance, withdrawal, and monitoring of a restricted-use driving permit issued under 61-5-232.

(14) The department may adopt rules governing the requirements for a veteran designation on a driver's license or identification card.

(15) The department may adopt rules governing the issuance of a replacement driver's license.

(16) The department may adopt rules governing the certification process for cooperative driver testing program instructors.

(17) The department may adopt rules for the implementation of online driver's license renewal.

(18) The department shall adopt rules governing the issuance, renewal, and cancellation of identification cards that align with the proof of identity, residence, and authorized presence standards for a driver's license.

(19) The department may adopt rules for determining moving violations.

(20) The department may adopt rules for charging a fee for not appearing at a scheduled commercial skills test or motorcycle test and for the waiver of the fee for good cause shown.

(21) *The department shall adopt rules governing restrictions for personal communication limitations and other medical information that would be helpful to a peace officer during a traffic stop.*

~~(21)~~(22) The department may adopt rules governing the conditions under which an applicant is eligible to receive a driver's license or identification card by expedited service and to set the fee for expedited service.

~~(22)~~(23) The department may adopt rules to implement any other provision of this title."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 1].

Approved May 3, 2021

## CHAPTER NO. 382

[HB 73]

AN ACT GENERALLY REVISING LAWS RELATED TO THE CRIMINAL JUSTICE OVERSIGHT COUNCIL; REQUIRING THE LEGISLATIVE SERVICES DIVISION TO PROVIDE CLERICAL AND ADMINISTRATIVE STAFF TO THE COUNCIL; AMENDING SECTION 53-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 53-1-216, MCA, is amended to read:

**"53-1-216. Montana criminal justice oversight council – duties – membership.** (1) There is a Montana criminal justice oversight council. The council consists of 16 members as follows:

(a) (i) two members of the house of representatives, one selected by the speaker of the house and one selected by the house minority leader; and

(ii) two members of the senate, one selected by the president of the senate and one selected by the senate minority leader;

(b) one district court judge selected by the chief justice of the Montana supreme court;

(c) the director and the deputy director of the department of corrections;

(d) a county sheriff and a county attorney appointed by the attorney general; and

(e) the following individuals appointed by the governor:

(i) a member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana who has expertise in criminal justice;

(ii) one member of the board of pardons and parole;

(iii) one member who represents the office of state public defender;

(iv) one representative of crime victims;

(v) one representative of civil rights advocates; and

(vi) two representatives of community corrections providers, one of whom must represent a treatment facility and one of whom must represent a prerelease center.

(2) ~~The department of corrections~~ *legislative services division* shall provide clerical and administrative staff services to the council.

(3) The council shall elect a presiding officer.

(4) The council shall:

(a) review the recommendations of the commission on sentencing established in Chapter 343, Laws of 2015;

(b) receive and analyze data collected by agencies and entities charged with implementing the recommendations of the commission on sentencing and that are collecting data during the implementation and management of specific recommendations;

(c) assess outcomes from the recommendations the commission on sentencing has made and corresponding criminal justice reforms; and

(d) request, receive, and review data and report on performance outcome data relating to criminal justice reform.

(5) Data evaluation performed by the council must:

(a) assess the current electronic records utilized by criminal justice agencies;

(b) review and list all variables collected in each agency's information management system;

(c) establish a baseline for historical data comparisons;

(d) determine whether data is linked to specific offenders through a unique identifying factor;

(e) review archival data and agencies' data retention policies;

(f) determine whether presentence investigation reports are completed electronically in the department of corrections' case management system within established statutory timelines;

(g) review any established data protocols for pretrial services;

(h) assess if the data collected or recommended to be collected on offenders and programs will provide criminal justice agencies, the legislature, and the public adequate information to determine whether correctional programs produce standardized outcomes across the state and are an efficient use of state resources; and

(i) review and suggest improvements for behavioral health screening instruments and other screening instruments as needed to ensure the integrity of data that is captured in criminal justice agencies' information management systems.

(6) The council shall examine the feasibility of creating and maintaining a public portal through which criminal justice data can be accessed, including data on court case filings, correctional populations, and historical and legacy data sets.

(7) The council shall submit by September 1 of each even-numbered year a biennial report to the governor and legislature, as provided in 5-11-210. The report must include:

(a) a description of the council's proceedings since the previous report;

(b) a summary of savings from criminal justice reforms and recommendations for how the savings should be reinvested to reduce recidivism;

(c) a description of performance measures and outcomes related to criminal justice reforms; and

(d) a narrative of the council's progress on establishing data collection and uniformity standards and any changes that have been implemented as a result of the council's work.

(8) The council may appoint a working group to track any legislation resulting from criminal justice reforms and to perform other detailed analysis as directed by the council. If appointed, the working group shall meet regularly and report to the council as the council requires. The working group may include representatives of criminal justice agencies and key constituencies that are not members of the council.

(9) Using the process established in legislative rules for executive agency legislative requests, the council may request legislation to enact changes to the state's criminal justice system that the council finds necessary.

(10) The judicial branch, the department of corrections, the department of public health and human services, the board of pardons and parole, and the legislative services and fiscal divisions shall provide data and information as requested by the council.

(11) Appointments made under subsection (1) must be made within 60 days after July 1, 2019. A vacancy on the council must be filled in the manner of the original appointment.

(12) Council members must be reimbursed for travel expenses as provided in 2-18-501 through 2-18-503. Members of the council who are full-time salaried officers or employees of this state or any political subdivision are entitled to their regular compensation. Legislative members must be compensated as provided in 5-2-302.

(13) The council shall report to the law and justice interim committee and the legislative finance committee as requested.”

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

Approved April 29, 2021

## CHAPTER NO. 383

[HB 90]

AN ACT REQUIRING A HEARING WITHIN 5 BUSINESS DAYS OF A CHILD'S REMOVAL FROM THE HOME; PROVIDING AN EXCEPTION; AMENDING SECTION 41-3-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Emergency protective services hearing – exception.**

(1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5 business days.

(b) The department shall provide notification of the hearing as required under 41-3-301.

(c) A hearing is not required if the child is released prior to the time of the required hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) This section does not apply to cases involving an Indian child who is subject to the Indian Child Welfare Act.

**Section 2.** Section 41-3-301, MCA, is amended to read:

**“41-3-301. Emergency protective service.** (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;;

(b) include information regarding the *emergency protective services* and show cause ~~hearing~~ *hearings*; and the purpose of the ~~show-cause hearing~~ *hearings*; and

(c) ~~must~~ advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share

information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed *in accordance with 41-3-422* within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [section 1].

**Section 5. Effective date.** [This act] is effective July 1, 2023.

Approved April 29, 2021

## CHAPTER NO. 384

[HB 155]

AN ACT GENERALLY REVISING LAWS RELATING TO REIMBURSEMENT FOR CERTAIN MEDICAID SERVICES; REQUIRING DEVELOPMENT OF A PLAN TO COLLECT DATA AND ANALYZE REIMBURSEMENT RATES FOR CERTAIN MEDICAID PROVIDERS; REQUIRING REPORTS; ESTABLISHING REQUIREMENTS FOR BUDGET SUBMISSIONS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING EQUITY IN INFLATIONARY ADJUSTMENTS FOR CERTAIN STATE INSTITUTIONS AND THE PRIVATE SECTOR; AMENDING SECTION 17-7-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Rate adequacy -- plan for collection of data -- reports.**

(1) The department of public health and human services, in collaboration with providers, consumers, and other stakeholders, shall develop a plan for collecting expenditure data from medicaid-dependent providers of services that:

(a) assist and support the elderly and persons with mental illness, physical disabilities, and developmental disabilities; and

(b) are administered by the department divisions responsible for overseeing services for the elderly and persons with mental illness, physical disabilities, or developmental disabilities.

(2) The purpose of the plan is to enable the department and the legislature to:

- (a) analyze the data;
- (b) determine the cost of providing services;
- (c) make sound judgments about whether the rates being paid for each service are too high, too low, or appropriate; and
- (d) make decisions about rates that are based on sound data and analysis.

(3) The plan must:

- (a) identify medicaid-dependent providers;
- (b) identify high-volume services based on the units of service and costs;
- (c) identify smaller providers who should be exempt from data reporting requirements;
- (d) determine a base year for data collection and identify the types of expenditures and the providers who are required to report data in order to make it possible to analyze data and make determinations about rate adequacy;
- (e) ensure that expenditure data reporting requirements are consistent across divisions of the department to the extent possible;
- (f) identify how often data should be collected for purposes of updating the base year expenditures; and

(g) create a schedule prioritizing the order in which data is collected from various providers in order to transition to a point at which the information will be available regarding all applicable providers and will be updated on a regular basis.

(4) (a) The plan must be completed no later than July 1, 2022, and be provided to the 2023 legislature in accordance with 5-11-210.

(b) Beginning no later than September 1, 2021, the department shall provide quarterly updates to the 2021-2022 children, families, health, and human services interim committee regarding the progress being made in developing the plan.

(5) For the purposes of this section, "medicaid-dependent providers" means providers with more than half of their clients receiving services through the medicaid program.

**Section 2.** 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), 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, 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 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;

(h) energy cost saving information as required by 90-4-616; and  
(i) 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 capital developments for:

(i) local infrastructure projects;

(ii) funding for energy development-impacted areas; and

(iii) the state long-range building program. Each recommendation for the capital developments long-range building program 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 the 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.

(7) *The following provisions apply to the development of the budget request for the department of public health and human services:*

(a) *Adjustments to the present law base must be separated by each category described in 17-7-102(10) in order for the legislature to determine the changes*

that are attributable to legally mandated workload, caseload, or enrollment increases or decreases, constitutional or statutory schedules or formulas, inflationary or deflationary adjustments, and elimination of nonrecurring appropriations.

(b) Inflation adjustments to the present law base for the institutions or services described in subsection (7)(c) must be based on a reliable national index for the particular service or a similar service or the consumer price index for urban wage earners and workers. An inflation adjustment that is greater than the applicable national index or consumer price index must be presented as a new proposal.

(c) Subsection (7)(b) applies to inflation adjustments for:

(i) the department-operated institutions described in 53-1-602; and  
(ii) services provided by private sector businesses and other entities that provide direct services to beneficiaries in medicaid programs that are administered by the department divisions responsible for overseeing services for the elderly and for persons with mental illness, physical disabilities, or developmental disabilities.”

**Section 3. Effective date.** [This act] is effective July 1, 2021.

Approved April 29, 2021

## CHAPTER NO. 385

[HB 264]

AN ACT GENERALLY REVISING LAWS FOR PASSING EMERGENCY VEHICLES; REVISING THE SPEED RULES FOR PASSING EMERGENCY AND LAW ENFORCEMENT VEHICLES; INCLUDING TOW TRUCKS AS VEHICLES TO MOVE OVER FOR; CREATING THE OFFENSE OF RECKLESS ENDANGERMENT OF EMERGENCY PERSONNEL; DESIGNATING RECKLESS ENDANGERMENT OF HIGHWAY WORKERS AND RECKLESS ENDANGERMENT OF EMERGENCY PERSONNEL AS SERIOUS TRAFFIC VIOLATIONS; AND AMENDING SECTIONS 61-8-346, 61-8-715, AND 61-8-803, MCA.

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

**Section 1.** Section 61-8-346, MCA, is amended to read:

**“61-8-346. Operation of vehicles on approach of authorized emergency vehicles or ~~police law enforcement~~ vehicles – approaching stationary emergency vehicles or ~~police law enforcement~~ vehicles – reckless endangerment of emergency personnel.** (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a ~~police law enforcement~~ vehicle properly and lawfully making use of an audible signal only, the operator of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle or ~~police law enforcement~~ vehicle has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section does not relieve the driver of an authorized emergency vehicle or ~~police law enforcement~~ vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(3) ~~Except as provided in subsection (4), upon~~ *On approaching and passing a stationary authorized emergency vehicle or, police law enforcement vehicle, or tow truck that is displaying visible signals of flashing or rotating amber, blue, red, or green lights, or any temporary sign advising of an emergency scene or accident ahead, the operator of the approaching vehicle shall:*

~~(a) reduce the vehicle's speed cautiously and in a careful manner reduce the vehicle's speed to a reasonably lower and safe speed appropriate to the road and visual conditions or to the temporarily posted speed limit, but to a careful and prudent speed if a temporarily posted speed has not been posted;;~~

~~(b) proceed with caution;; and;~~

~~(c) if possible considering safety and traffic conditions;;~~

~~(i) move to a lane that is not adjacent to the lane in which the authorized emergency vehicle or, police law enforcement vehicle, or tow truck is located or;~~

~~(ii) move as far away from the authorized emergency vehicle or, police law enforcement vehicle, or tow truck as possible; or~~

~~(iii) follow flagger instructions or instructions on sign boards; or~~

~~(b) if changing lanes is not possible or is determined to be unsafe, reduce the vehicle's speed, proceed with caution, and maintain a reduced speed, appropriate to the road and the conditions, through the area where the authorized emergency vehicle or police vehicle is stopped.~~

~~(4) Upon approaching a stationary authorized emergency vehicle or police vehicle that is displaying visible signals of flashing or rotating amber, blue, red, or green lights on a public highway with a posted speed limit of 50 miles per hour or greater when driving in a lane that is directly next to the emergency vehicle or police vehicle, the operator of the approaching vehicle shall reduce the vehicle's speed by at least 20 miles per hour below the posted speed limit *An operator of a vehicle who violates subsection (3) commits the offense of reckless endangerment of emergency personnel.*~~

**Section 2.** Section 61-8-715, MCA, is amended to read:

**"61-8-715. Reckless driving – reckless endangerment of highway workers – reckless endangerment of emergency personnel – penalty.**

(1) Except as provided in subsection (2), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b) or, convicted of reckless endangerment of a highway worker under 61-8-301(4), or *convicted of reckless endangerment of emergency personnel under 61-8-346* shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, a fine of not less than ~~25~~ \$100 or more than ~~300~~ \$500, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, a fine of not less than ~~50~~ \$500 or more than ~~500~~ \$1,000, or both.

(2) A person who is convicted of reckless driving under 61-8-301 or *convicted of reckless endangerment of emergency personnel under 61-8-346* and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding \$10,000, incarceration for a term not to exceed 1 year, or both."

**Section 3.** Section 61-8-803, MCA, is amended to read:

**"61-8-803. Suspension of commercial driver's license – serious traffic violations.** (1) If the department receives notice from a court or another licensing jurisdiction that a person holding or required to hold a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

- (2) For purposes of this section, “serious traffic violation” means conviction, when operating a commercial motor vehicle, of:
- (a) speeding 15 or more miles an hour above a posted speed limit;
  - (b) reckless driving, *reckless endangerment of a highway worker, or reckless endangerment of emergency personnel*;
  - (c) improper or erratic traffic lane changes;
  - (d) following too closely;
  - (e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident;
  - (f) operating a commercial motor vehicle without a commercial driver’s license;
  - (g) operating a commercial motor vehicle without a commercial driver’s license in one’s possession or refusing to display a commercial driver’s license upon request;
  - (h) operating a commercial motor vehicle without the proper class of commercial driver’s license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported; or
  - (i) using a mobile device to send text messages while operating a commercial motor vehicle in violation of a state or local law or ordinance on motor vehicle traffic control.
- (3) A person is considered to have committed a second or subsequent serious traffic violation if less than 3 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.”

Approved April 29, 2021

## CHAPTER NO. 386

[HB 333]

AN ACT REVISING LAWS RELATED TO SEXUAL AND VIOLENT OFFENDERS; PROVIDING THAT INDIVIDUALS CONVICTED OF A CRIME REQUIRING THEM TO REGISTER AS A SEXUAL OR VIOLENT OFFENDER ARE SUBJECT TO THE CRIME OF UNLAWFUL POSSESSION OF A FIREARM BY A CONVICTED PERSON AND MAY NOT POSSESS FIREARMS; AND AMENDING SECTION 45-8-313, MCA.

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

**Section 1.** Section 45-8-313, MCA, is amended to read:

**“45-8-313. Unlawful possession of firearm by convicted person.**

(1) A person commits the offense of unlawful possession of a firearm by a convicted person if the person purposely or knowingly purchases or possesses a firearm after the person has been convicted of:

(a) a felony for which the person received an additional sentence under 46-18-221; ~~or~~

(b) an offense under the law of another state or of the United States that is equivalent to an offense that when committed in Montana is subject to an additional sentence under 46-18-221; *or*

(c) *a felony for which the person is currently required to register for the sexual or violent offender registry.*

(2) A person convicted of unlawful possession of a firearm by a convicted person shall be imprisoned in a state prison for not less than 2 years or more than 10 years.

(3) A person who has been issued a permit under 45-8-314 may not be convicted of a violation of this section.”

Approved April 29, 2021

## CHAPTER NO. 387

[HB 362]

AN ACT CLARIFYING THAT MILITARY LEAVE IS CREDITED IN FULL AFTER 6 MONTHS OF EMPLOYMENT; AMENDING SECTION 10-1-1009, MCA; AND PROVIDING AN IMMEDIATE 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) An employee of the state or of any political subdivision, as defined in 2-9-101, who is a member of the national guard of Montana or any other 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 120 hours in a calendar year, or academic year if applicable, for performing military service.

(b) *The full 120 hours of leave provided for in subsection (1)(a) must be credited in full to an employee after 6 months of employment and in each successive calendar year, or academic year if applicable.*

(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 240 hours in any calendar or academic year.”

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

Approved April 29, 2021

## CHAPTER NO. 388

[HB 398]

AN ACT AUTHORIZING LEGISLATORS TO REVIEW RECORDS OF CASES INVESTIGATED BY THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; ESTABLISHING PROCEDURES FOR REVIEW; REQUIRING CONFIDENTIALITY; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Legislator access to ombudsman records.** (1) Records of ombudsman investigations, including case notes, correspondence, and interviews, must be disclosed to a member of the legislature if:

(a) the legislator receives a written request from a person who has requested assistance from the ombudsman about whether laws protecting children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

(b) the legislator submits a written request to the ombudsman asking to review the records relating to the written inquiry. The legislator’s request

must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the ombudsman in locating the records.

(c) before reviewing the records, the legislator:

(i) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(ii) receives from the ombudsman an orientation of the content and structure of the records.

(2) Records disclosed pursuant to this section are confidential, must be made available for the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member, and must remain solely in the ombudsman's possession. The records may be viewed at any office maintained by the office of the child and family ombudsman.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 12, and the provisions of Title 41, chapter 3, part 12, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2021.

Approved April 29, 2021

## CHAPTER NO. 389

[HB 445]

AN ACT GENERALLY REVISING AUTOMOBILE LAWS; PROVIDING FOR LOANER PLATES; PROVIDING FOR MEDIATION OF DISPUTES; PROVIDING FOR RESOLUTION OF DISPUTES; PROVIDING STANDING TO BRING ACTION; PROVIDING FOR WARRANTY REIMBURSEMENT; PROVIDING FOR REGISTRATION OF CERTAIN VEHICLES BY A MONTANA RESIDENT IF THE RESIDENT CO-OWNS THE VEHICLE WITH OUT-OF-STATE RESIDENTS; PROVIDING DEFINITIONS; AMENDING SECTIONS 61-1-101, 61-3-224, 61-3-303, 61-3-311, 61-3-312, 61-3-332, 61-3-456, 61-4-111, 61-4-128, 61-4-129, 61-4-201, 61-4-207, 61-4-213, AND 61-14-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, 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 motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state.

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

**Section 1. Mediation of disputes.** (1) All disputes between a manufacturer, person, or entity described in 61-4-208(1) and a new motor vehicle dealer or transferee of a new motor vehicle dealer alleged to be in violation of any provision of Montana law, including but not limited to 30-11-701 through 30-11-713, 30-11-717 through 30-11-719, 61-4-131 through 61-4-137, 61-4-150, 61-4-205(1) and (2), 61-4-208, and 61-4-213, are subject to mediation as provided for in this section. A demand for mediation must be served on the adverse party before or contemporaneous with the filing of

the objection, protest, complaint, or petition or the bringing of the action. A demand for mediation must be in writing and served on the adverse party by certified mail, return receipt requested, or by overnight delivery service that provides proof of delivery at an address designated for the party in the records of the complainant. The demand for mediation must contain a brief statement of the dispute and the relief sought by the complainant filing the demand.

(2) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. If the parties are unable to agree on a mediator, a party may apply to a district judge of the first judicial district, Lewis and Clark County, for appointment of a mediator. The meeting place must be within this state in a location selected by the mediator in proximity to the place of business of a party domiciled in this state. The mediator may extend the date of the meeting for good cause shown by either party or on the stipulation of both parties.

(3) The service of a demand for mediation under subsection (1) must stay the time for the filing of any objection, protest, complaint, or petition with the department or for bringing an action until the representatives of both parties have met with a mutually selected or appointed mediator for the purpose of attempting to resolve the dispute. If an objection, protest, complaint, or petition is filed before the meeting, the department or the court shall enter an order suspending the proceeding or action until the meeting has occurred and may, on the written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, enter an order suspending the proceeding or action for as long a period as the department or court considers to be appropriate. A suspension order issued under this subsection may be revoked on motion of any party or on motion of the department or the court.

(4) The department shall encourage dealers and manufacturers to establish a panel of mediators who have the character, ability, and training to serve as mediators and who have knowledge of the motor vehicle industry.

(5) A mediator is immune from civil liability for any good faith act or omission within the scope of the mediator's or arbitrator's performance of the mediator's or arbitrator's powers and duties under this chapter. An act or omission of a mediator is presumed to be a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

**Section 2. Administrative hearings and adjudications – procedure.**

(1) A new motor vehicle dealer or transferee of a new motor vehicle dealer who is directly and adversely affected by the action or conduct of a manufacturer, person, or entity described in 61-4-208(1) that is alleged to be in violation of any provision of Montana law, including but not limited to 30-11-701 through 30-11-713, 30-11-717 through 30-11-719, 61-4-131 through 61-4-137, 61-4-150, 61-4-208, and 61-4-213, may seek a declaration and adjudication of rights and obligations with respect to the alleged action or conduct by filing with the department a complaint and request for an administrative hearing that conforms substantially with the requirements of the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, which governs all matters and procedures respecting the hearing and judicial review of cases such as this. The hearing officer shall assess the department's costs against the parties or a party as a cost of the action.

(2) Objections or notice of protest pursuant to 61-4-205(1) and (2) must be adjudicated pursuant to those statutes if mediation pursuant to [section 1] is unsuccessful.

**Section 3. Standing to bring action.** (1) The following entities have standing to seek redress for violations of Title 30, chapters 11 and 14, part

25, of this chapter, or of any other provision of Montana law relating to or affecting the relationship between a manufacturer, person, or entity described in 61-4-208(1) and a new motor vehicle dealer:

- (a) a new motor vehicle dealer;
  - (b) a transferee of a new motor vehicle dealer; and
  - (c) any corporation or association that is primarily owned by or composed of new motor vehicle dealers and that primarily represents the interests of new motor vehicle dealers if at least one of the corporation or association members would have standing on its own, the interests that the action seeks to protect are germane to the corporation or association's purpose, and the claim asserted or the relief requested does not require the participation of individual members in the action.
- (2) Entities that have standing under subsection (1) may:
- (a) file a petition and request the department handle the matter as an administrative proceeding; or
  - (b) bring a civil action in a court of competent jurisdiction.
- (3) An action filed under this section may seek:
- (a) recovery of actual damages;
  - (b) declaratory or injunctive relief; or
  - (c) reasonable costs of the suit and attorney fees to a prevailing party.
- (4) A court or administrative hearing officer may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained for a willful violation of this chapter.

**Section 4. Loaner license plates -- issuance -- restrictions on use.** (1) On application and payment of an annual fee of \$25 for a set, the department may issue loaner plates to a new motor vehicle dealer as defined in section 61-4-201.

- (2) Loaner license plates may be displayed only on a new motor vehicle:
- (a) that remains on a manufacturer's statement of origin;
  - (b) that is in the inventory of the dealer and held primarily for resale; and
  - (c) that the dealer loans to a customer while the dealer is repairing the customer's vehicle.
- (3) A dealer shall maintain records detailing to whom a vehicle bearing loaner plates has been loaned, the date of the loan, the date on which the vehicle bearing loaner plates is to be returned, and the actual date of the vehicle's return. These records must include the name, address, and telephone number of the person or entity to whom the vehicle has been loaned and the name of a contact person who will oversee the actual operation and use of the vehicle. The records are subject to audit by the department.
- (4) It is the responsibility of the person or entity to whom the vehicle bearing loaner plates was loaned to carry, while operating or in actual physical control of the vehicle, written proof that the person or entity is authorized to operate or be in actual physical control of the vehicle.
- (5) If a dealer allows a person or entity to operate or retain actual physical control of a vehicle bearing loaner plates in violation of this section, the department may suspend the dealer's right to use the loaner plates for a period not to exceed 6 months.

**Section 5.** 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 on 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) "Autocycle" means a three-wheeled motorcycle that is equipped with safety belts, roll bars or roll hoops, a steering wheel, and seating that does not require the operator to straddle or sit astride it.

(4) "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.

(5) (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.

(6) (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.

(7) "CDLIS driver record" means the electronic record of a person's commercial driver's license status and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

(8) "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.

(9) "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; or

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(10) (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.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency vehicle;

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) operated when responding to or returning from an emergency call or operated in another official capacity;

(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 (10):

(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.

(11) "Commission" means the state transportation commission.

(12) "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; or

(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.

(13) "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.

(14) "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 (14)(a) through (14)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(15) (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 (15)(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.

(16) "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.

(17) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(18) "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.

(19) "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.

(20) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that person.

(21) "Driver" means a person who drives or is in actual physical control of a vehicle.

(22) "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 learner license;

(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.

(23) "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.

(24) "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.

(25) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

(26) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(27) "Hazardous material" means:

(a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or

(b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

(28) "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.

(29) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(30) "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.

(31) "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.

(32) "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.

(33) "Low-speed electric vehicle" means a motor vehicle, on or by which a person may be transported, that:

(a) has four wheels;

(b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;

(c) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(f) 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; and

(g) is equipped as provided in 61-9-432.

(34) "Low-speed restricted driver's license" means a license limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

(a) a temporary license or learner license;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of 61-5-122, whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

(35) "Manufactured home" has the meaning provided in 15-24-201.

(36) "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.

(37) “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.

(38) (a) “Medium-speed electric vehicle” is a motor vehicle, on or by which a person may be transported, that:

(i) has a maximum speed of 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.

(39) “Mobile home” or “housetrailer” has the meaning provided in 15-24-201.

(40) “Montana resident” means:

(a) an individual who resides in Montana as determined under 1-1-215; or

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(41) (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.

(42) (a) “Motor carrier” means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles on 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.

(43) (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) A motorcycle designed for use on highways is a motor vehicle unless otherwise prescribed.

(c) A motorcycle designed for off-road recreational use is an off-highway vehicle unless it has been modified to meet the equipment standards specified in chapter 9 and has been registered for highway use.

(d) The term includes an auticycle.

(e) The term does not include a tractor, a bicycle or a moped 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.

(44) (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 or a moped, as defined in 61-8-102, or a motorized nonstandard vehicle.

(45) "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.

(46) (a) "Motorized nonstandard vehicle" means a vehicle, on 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 a moped as defined in 61-8-102, 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.

(47) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property on the highways of the state;

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; or

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle or a moped 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.

(48) "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.

(49) “Nonresident” means a person who is not a Montana resident.

(50) (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 for 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.

(51) (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 on the highways unless the vehicle is used for off-road recreation on public lands.

(52) “Operator” means a person who is in actual physical control of a motor vehicle.

(53) “Owner” means a *each* 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 *and control* vested in the conditional vendee, *an individual human being* 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 *in an individual human being*, or in the event a mortgagor of a vehicle is entitled to possession *and control*, then the owner is the ~~person~~ *individual human being or mortgagor* in whom is vested the right of possession ~~or~~ *and control*.

(54) “Person” means an individual *human being*, corporation, partnership, association, firm, or other legal entity.

(55) “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.

(56) “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.

(57) “Police officer” means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(58) (a) “Quadricycle” means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle on which the operator sits.

(b) The term does not include golf carts.

(59) “Railroad” means a carrier of persons or property on cars, other than streetcars, operated on stationary rails.

(60) (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 on rails.

(b) The term does not include streetcars.

(61) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(62) "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.

(63) "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.

(64) "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.

(65) "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.

(66) "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 on by the department after the expiration of the period of the revocation.

(67) "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.

(68) (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.

(69) "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).

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

(71) "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 on or is carried by another vehicle.

(72) "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.

(73) "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.

(74) (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.

(75) (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.

(76) (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.

(77) "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.

(78) "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.

(79) "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.

(80) "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.

(81) "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:

(i) 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs; or

(ii) 90 days from the date the record is issued for a permit issued pursuant to 61-3-303~~(3)(b)~~ (4)(b).

(82) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(83) (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 on the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(84) "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.

(85) "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.

(86) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(87) "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.

(88) "Under the influence" has the meaning provided in 61-8-401.

(89) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, or 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.

(90) "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.

(91) (a) "Vehicle" means a device in, on, or by which any person or property may be transported or drawn on a public highway, except devices moved by animal power or used exclusively on 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.

(92) "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.

(93) "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.

(94) "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 6.** Section 61-3-224, MCA, is amended to read:

**"61-3-224. Temporary registration permit – issuance – placement – fees.** (1) (a) The department, an authorized agent, or a county treasurer may issue a temporary registration permit for any purpose authorized under the rules adopted by the department.

(b) An authorized agent or a county treasurer may issue a temporary registration permit without use of the department-approved electronic interface only if authorized by the department.

(2) A person, using a department-approved electronic interface, may issue a temporary registration permit for any purpose authorized under the rules adopted by the department.

(3) A temporary registration permit issued under this section must contain the following information:

(a) a temporary plate number as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile, including year, make, model, and vehicle identification number, the name of the person from whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile was transferred, the name, mailing address, and residence address of the person to whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile has been transferred, and the date of issuance.

(4) A temporary registration permit for:

(a) a motor vehicle, trailer, semitrailer, or pole trailer must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed; and

(b) a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle must be plainly visible and firmly attached to the vehicle or vessel.

(5) (a) Except as provided in 61-3-431 and subsections (5)(b) and (5)(c) of this section, a \$19.50 fee is imposed upon issuance of a temporary registration

permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer when the vehicle is registered.

(b) Except as provided in 61-3-431, a fee of \$24.50 is imposed and must be paid upon issuance of a temporary registration permit by:

(i) the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a vehicle or vessel in this state or who registers for temporary use in this state a quadricycle or motorcycle designed for off-road recreational use; or

(ii) a person who issued a temporary registration permit using a department-approved electronic interface.

(c) A fee of \$24 is imposed and must be paid upon issuance of a temporary registration permit for a 90-day temporary registration permit as provided in 61-3-303~~(3)~~~~(b)~~~~(4)~~~~(b)~~.

(6) The fees imposed under this section, upon collection, must be forwarded to the state and deposited as follows:

(a) \$16.50 from each permit fee collected pursuant to subsection (5) in the state special revenue account established in 44-10-204; and

(b) the remainder in the motor vehicle electronic commerce operating account provided for in 61-3-118.

(7) If a temporary registration permit is issued under this section to a person to whom ownership of a vehicle or vessel has been transferred, the permitholder shall title and register the vehicle or vessel in this or another jurisdiction before the ownership of the vehicle or vessel may be transferred to another person."

**Section 7.** Section 61-3-303, MCA, is amended to read:

**"61-3-303. Original registration -- process -- fees.** (1) Except as provided in 61-3-324, a Montana resident who *owns is an owner of* a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the county where the *registering* owner is domiciled. A nonresident who has an interest in real property in Montana may register in the county where the real property is located a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state.

(2) *A Montana resident who is an owner of a motor vehicle, trailer, semitrailer, or pole trailer with co-owners, one or more of whom are non-Montana residents, may register the vehicle regardless of the fact that one or more of the co-owners would otherwise not qualify to register the vehicle under subsection (1) if the registering Montana resident is:*

(a) *an individual human being; and*

(b) *the principal operator of, and in whom is vested the right of possession and control of, the vehicle.*

~~(2)~~~~(3)~~ Except as provided in subsection ~~(3)~~ (4), the county treasurer or an authorized agent shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, ~~the~~ *an* owner delivers an application for a certificate of title to the department, an authorized agent, or a county treasurer; or

(b) the county treasurer or an authorized agent confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

~~(3)~~~~(4)~~ (a) A county treasurer or an authorized agent may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is

required under 61-3-701 after the county treasurer or the authorized agent examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer or an authorized agent may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer or an authorized agent shall collect fees pursuant to 61-3-203 and 61-3-220(4) and issue a 90-day temporary registration permit pursuant to 61-3-224 for a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner shall request the 90-day temporary registration permit from the authorized agent or county treasurer that originally issued the temporary registration permit.

~~(4)~~(5) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer or an authorized agent shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection ~~(5)~~ (6); and

(e) assign and issue license plates for the vehicle under 61-3-331.

~~(5)~~(6) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer or an authorized agent:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of \$1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of \$1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

~~(6)~~(7) The county treasurer or an authorized agent may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection ~~(5)~~ (6).

~~(7)~~(8) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

~~(8)~~(9) Revenue that accrues from the voluntary donation provided in subsection ~~(5)~~(b) ~~(6)~~(b) must be forwarded by the respective county treasurer or

an authorized agent to the department for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

~~(9)(10)~~ (a) Except as provided in subsection ~~(9)(b)~~ (10)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. ~~Once~~ When registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred or unless it was registered under 61-3-701.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

~~(10)(11)~~ Revenue that accrues from the voluntary donation provided in subsection ~~(5)(c)~~ (6)(c) must be forwarded by the respective county treasurer or an authorized agent to the department for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

~~(11)(12)~~ The department, an authorized agent of the department, or a county treasurer shall use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify that the vehicle owner has complied with the requirements of 61-6-301.”

**Section 8.** Section 61-3-311, MCA, is amended to read:

**“61-3-311. Registration – time periods.** (1) Unless a motor vehicle, trailer, semitrailer, or pole trailer is subject to permanent registration under this title and except as provided in 61-3-313, 61-3-701, 61-3-721, and subsection (3) of this section, the department, an authorized agent, or a county treasurer shall, upon original registration of a motor vehicle in this state, assign each motor vehicle to a registration period, as provided in 61-3-316, based upon the calendar month in which the motor vehicle is first registered in this state and designate the calendar year in which the current registration will expire.

(2) Each registration period commences on the first day of the calendar month in the calendar year in which the motor vehicle is registered and the motor vehicle’s registration expires on the earlier of:

(a) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle’s registration decal if the motor vehicle is registered for a minimum 12-month period;

(b) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle’s registration decal if the motor vehicle is registered for a period of at least 13 but less than 25 months; or

(c) the transfer of ownership of the motor vehicle, trailer, semitrailer, or pole trailer to another person.

(3) (a) Upon request of the motor vehicle owner, a county treasurer or an authorized agent may assign a motor vehicle to a registration period, as provided in 61-3-316, other than a registration period beginning in the calendar month in which the motor vehicle is first registered in this state if at least 13 but less than 25 months will elapse between the first day of the

calendar month in which the motor vehicle is registered and the last day of the month preceding the anniversary of the requested registration period in the year designated on the motor vehicle's registration decal.

(b) The county treasurer or an authorized agent shall determine fees imposed for a motor vehicle registered for a period between 13 and 24 months. All registration fees, fees in lieu of tax, or local option taxes or fees that are imposed on an annual basis must be prorated based on the number of months in the requested registration period.

(c) A motor vehicle registered under the provisions of 61-3-303(3)(b)(4)(b) may not be registered under this subsection (3).

(4) If a motor vehicle, trailer, semitrailer, or pole trailer is permanently registered under the provisions of this chapter, the registration is not subject to expiration unless the registered owner of the motor vehicle, trailer, semitrailer, or pole trailer transfers ownership of the vehicle to another person."

**Section 9.** Section 61-3-312, MCA, is amended to read:

**"61-3-312. Renewal of registration – exceptions – grace period.**

(1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration.

(2) A person may renew a motor vehicle's registration by submitting full payment for the fees or taxes required under 61-3-303 and 61-3-321(13) to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer shall use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

(4) The registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

(5) The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period.

(6) The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b)(4)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

**Section 10.** Section 61-3-332, MCA, is amended to read:

**"61-3-332. Standard license plates.** (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued

to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9)(10) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) New license plates issued under 61-3-303 or this section must be a standard license plate design first issued in 1989 or later or current collegiate or generic specialty license plate designs. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with new license plates if, upon renewal of registration under 61-3-312, the license plates are 5 or more years old or will become older than 5 years during the registration period. New license plates must be issued in accordance with the implementation schedule adopted by the department under 61-14-101.

(iii) A vehicle owner may elect to keep the same license plate number from license plates issued before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) (a) All license plates must be metal and treated with a reflectorized background material according to specifications prescribed by the department. The word "Montana" must be placed on each license plate and, except for license plates that are 4 inches wide and 7 inches in length, the outline of the state of Montana must be used as a distinctive border on each standard license plate.

(b) Plates for semitrailers, travel trailers, pole trailers, trailers with a declared weight of 6,000 pounds or more, and motor vehicles, other than motorcycles and quadricycles, must be 6 inches wide and 12 inches in length.

(c) Plates for motorcycles and quadricycles must be 4 inches wide and 7 inches in length.

(d) The department shall issue plates that are 4 inches wide and 7 inches in length for trailers with a declared weight of less than 6,000 pounds unless a person registering a trailer with a declared weight of less than 6,000 pounds requests plates that are 6 inches wide and 12 inches in length. A person registering a trailer shall pay all applicable fees for the plates chosen.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, fleet license plates, and standard license plates that are 4 inches wide and 7 inches in length, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15;

Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may and a person with a low-speed restricted driver's license operating a low-speed electric vehicle or golf cart as provided in 61-5-122 must, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

**Section 11.** Section 61-3-456, MCA, is amended to read:

**"61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.**

(1) As an incentive for military service, an owner of a motor vehicle, trailer, semitrailer, or pole trailer who is a Montana resident who entered active military duty from Montana, including a national guard or reserve member, and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle, trailer, semitrailer, or pole trailer. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle, trailer, semitrailer, or pole trailer; and

(c) that the motor vehicle, trailer, semitrailer, or pole trailer is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle, trailer, semitrailer, or pole trailer registered under subsection (1) is as provided in 61-3-321.

(3) A motor vehicle, trailer, semitrailer, or pole trailer registered under this section is not subject to:

(a) the taxes or fees described in 61-3-303~~(5)~~(6);

(b) the fee in lieu of tax under 61-3-529 or the registration fee under 61-3-321(2) or 61-3-562; or

(c) any of the fees provided in part 5 of this chapter.”

**Section 12.** Section 61-4-111, MCA, is amended to read:

**“61-4-111. Used vehicles – transfer to and from dealers.** (1) Except as provided in 61-4-124(6), a dealer or wholesaler who intends to resell a used motor vehicle, power sports vehicle, or trailer and who operates the motor vehicle, power sports vehicle, or trailer only for demonstration purposes:

(a) is exempt from registration under 23-2-515, 23-2-616, 23-2-804, or 61-3-302(3) when applying for a certificate of title; and

(b) may transfer or receive ownership of a motor vehicle, power sports vehicle, or trailer by use of a dealer reassignment section on a certificate of title. However, when the allotted number of dealer reassignment sections on a certificate of title has been completed, ownership of the motor vehicle, power sports vehicle, or trailer may not be transferred until an application for a certificate of title has been submitted by the dealer or an authorized agent to an authorized agent or the department and a new certificate of title has been issued.

(2) Upon the transfer of a used motor vehicle, power sports vehicle, or trailer to a person other than a dealer or wholesaler, a temporary registration permit may be issued under 61-3-224 to the person to whom the used motor vehicle, power sports vehicle, or trailer was transferred if the dealer is an authorized agent, as defined in 61-1-101. In addition, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Within 30 calendar days following the date of delivery of the motor vehicle, power sports vehicle, or trailer or within 120 calendar days if a temporary registration permit is issued pursuant to 61-3-303~~(3)~~(b)(4)(b), the dealer shall forward to an authorized agent or to the county treasurer of the county where the owner of the motor vehicle, power sports vehicle, or trailer is domiciled:

(i) the assigned certificate of title or, if a certificate of title for the motor vehicle, power sports vehicle, or trailer has not been issued in this state, a copy of the then-current registration receipt or certificate in the dealer’s possession; and

(ii) an application for a certificate of title executed by the new owner in accordance with the provisions of 61-3-216 and 61-3-220.

(b) Transmission of the documents by the dealer to the county treasurer or an authorized agent may be accomplished either by personal delivery, by first-class mail, or by electronic means, as authorized by the department.

(c) If the dealer is unable to forward the certificate of title or, if applicable, registration receipt within the time set forth in subsection (2)(a), the dealer is subject to the provisions of 61-4-119.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle, power sports vehicle, or trailer is considered to have passed to the purchaser as of the date of the delivery of the motor vehicle,

power sports vehicle, or trailer to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.”

**Section 13.** Section 61-4-128, MCA, is amended to read:

**“61-4-128. Common standards – dealer plates – demonstrator plates – loaner plates – identification cards – fees.** (1) (a) Dealer, demonstrator, *loaner*, and courtesy license plates authorized under this part must be designed by the department in a manner that is similar to standard license plates furnished under 61-3-332, but the word “dealer”, “demonstrator”, “*loaner*”, or “courtesy” must be included in the plate design.

(b) Dealer, demonstrator, *loaner*, and courtesy license plates must be numbered in a manner that is readily distinguishable from other plate styles issued by the department. The numbering system for dealer plates must contain the distinctive license number assigned by the department to a dealer and a number or alphanumeric identification mark that relates to the assignment of sets of dealer plates to a dealer. The numbering system for demonstrator *and loaner* plates may be sequential and unrelated to the number of demonstrator plates or the distinctive license number assigned to a dealer, wholesaler, or auto auction.

(c) Dealer, demonstrator, *loaner*, and courtesy plates issued under this part must be replaced on the same cycle that is required for standard license plates under 61-3-332.

(d) Except as provided in 61-4-124, dealer, demonstrator, *loaner*, and courtesy plates must display a registration decal, affixed as prescribed by the department, for the calendar year for which use of the plate or plates is authorized under this part.

(2) (a) Identification cards must be designed by the department and furnished to dealers to authorize the demonstration of a motorboat or personal watercraft, a snowmobile, or an off-highway vehicle by a dealer licensed under this part or a customer of a dealer licensed under this part. Each identification card must include the dealer’s name and address and the license number assigned by the department to the dealer and must designate the type of power sports vehicle for which its use is authorized, such as a motorboat or personal watercraft, snowmobile, or off-highway vehicle.

(b) The department may use the same numbering system for identification cards as it uses for demonstrator *and loaner* plates.

(3) (a) Upon issuance of a license to a dealer whose business includes the sale of motorboats or personal watercraft, snowmobiles, or off-highway vehicles, the department shall furnish identification cards to a dealer as follows:

(i) for a dealer who sells motorboats or personal watercraft, one identification card;

(ii) for a dealer who sells snowmobiles, two identification cards; and

(iii) for a dealer who sells off-highway vehicles, two identification cards.

(b) The dealer may obtain additional identification cards for \$2, as needed, and upon submitting justification for the need to the department.

(4) (a) An identification card issued to a dealer who sells motorboats or personal watercraft may be displayed on a dealer’s motorboat or personal watercraft while the motorboat or personal watercraft is operating for a purpose related to the buying, selling, exchanging, or performance testing of the motorboat or personal watercraft by the dealer, manufacturer, or potential buyer.

(b) An identification card issued to a dealer who sells snowmobiles must be carried by the dealer when demonstrating the dealer’s snowmobiles or by the dealer’s customer.

(c) An identification card issued to a dealer who sells off-highway vehicles must be carried by the dealer when the dealer's off-highway vehicles are being demonstrated for sale purposes or by the dealer's customer.

(5) (a) All dealer, demonstrator, *loaner*, and courtesy plates and identification cards issued under this part are expired on the first day following the dealer license expiration date of the year of issue and must be renewed annually.

(b) A dealer, wholesaler, or auto auction that files the annual report as required under 61-4-120, 61-4-124, or 61-4-125 may display or use dealer or demonstrator plates and identification cards assigned for the prior calendar year until the dealer license expiration date."

**Section 14.** Section 61-4-129, MCA, is amended to read:

**"61-4-129. Assignment of demonstrator plates.** (1) (a) A dealer or wholesaler may purchase demonstrator plates at a fee of \$5 a plate.

(b) Demonstrator plates may not be issued to a new or used dealer whose business is restricted to the sale of power sports vehicles.

(2) (a) Except as provided in subsection (2)(c), demonstrator plates may be used on a motor vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), or on a truck, truck tractor, truck tractor pulling a laden or unladen semitrailer, or travel trailer that is:

(i) being demonstrated and offered for sale ~~or loaned~~ to a dealership customer for not more than 72 hours when operated by an individual holding a valid operator's license;

(ii) owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) being tested for repair;

(iv) being moved to or from a dealer's place of business for sale;

(v) being moved to or from service and repair facilities before sale; and

(vi) being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Demonstrator plates may be used:

(i) on trailers being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on travel trailers held for sale to demonstrate the towing capability of the motor vehicle, for not more than 72 hours;

(iii) on any motor vehicle owned by the dealer that is used only to move a travel trailer that is in the dealer's inventory; and

(iv) on trailers being moved to or from exhibitions within the state if the exhibition does not exceed a period of 20 days.

(c) Extra demonstrator plates may be made available to dealers eligible for demonstrator plates under subsection (2)(a) to provide to one or more service repair facilities to be used when moving a motor vehicle in the dealer's inventory to and from the dealer's place of business and the service and repair facility prior to sale. A motor vehicle displaying demonstrator plates under this subsection is not required to have a Monroney label or a buyer's guide label as required by 61-4-123(2).

(d) A motor vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the motor vehicle."

**Section 15.** 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.

(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.

(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.

(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.

(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.

(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.

(8) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(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.

(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.

(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.

(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.

(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.

(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.

(16) "*Transferee*" means a person or entity that:

(a) *is in possession or control of a new motor vehicle dealer;*

(b) *holds an ownership or signed contract interest in a new motor vehicle dealer;*

(c) *is acting in a fiduciary capacity for a new motor vehicle dealer; or*

(d) *is an heir, devisee, personal representative, beneficiary, successor, or assign of a new motor vehicle dealer."*

**Section 16.** 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 all the existing circumstances, including but not limited to:

(a) the franchisee's sales in relation to the Montana market that are essential, reasonable, and not discriminatory and that take into account the franchisee's local market variations beyond adjusting for the local popularity of general vehicle types;

(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 franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

(g) except as provided in subsection (2), 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;
  - (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:
    - (i) for greater market penetration; or
    - (ii) to alter the number of the franchisor's or franchisor's representative's franchises or dealer locations.
- (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 existing franchisees of the same line-make in that community;
  - (b) investment necessarily made and obligations incurred by other existing franchisees of the same line-make in that community in the performance of their part of their franchise agreements and the date of the investment made and the obligations incurred by the existing franchisees in relation to the date of appointment of the additional franchisee;
  - (c) whether the other existing franchisees of the same line-make in that community are substantially compliant with reasonable manufacturer requirements for providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, special and essential tools and equipment, replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make; and
  - (d) whether the demographic characteristics, including population, of that community have changed sufficiently since the appointment of the other existing franchisees to support the economic viability of both the other existing franchisees and the additional franchisee; and
  - (e) *whether the franchisor's action is in good faith.*"

**Section 17.** Section 61-4-213, MCA, is amended to read:

**"61-4-213. Warranty reimbursement.** (1) (a) If a motor vehicle franchisor requires or permits motor vehicle franchisees to perform labor or provide parts in satisfaction of a warranty issued by the franchisor:

(i) the motor vehicle franchisor shall reimburse the motor vehicle franchisee for the labor as rendered, *using the franchisor's labor time guide or the labor time guide used by the dealer for labor furnished other than pursuant to warranty, at the dealer's election*, and for parts and supplies, including but not limited to engine, transmission, and other parts assemblies, as furnished, in an amount equal to the prevailing retail rate charged by the franchisee for ~~such~~ *the* labor or the prevailing retail markup charged by the franchisee for the parts and supplies in circumstances in which ~~such~~ *the* labor is rendered or the parts and supplies are furnished other than pursuant to warranty;

(ii) the motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection (1)(a)(i) for labor performed on and parts supplied for a motor vehicle by the franchisee in good faith and in accordance with the manufacturer's warranty and written repair requirements and procedures, notwithstanding any requirement that the franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of Title 61, chapter 4, part 5; and

(iii) the motor vehicle franchisee may establish its prevailing retail labor rate or parts markup by submitting to the motor vehicle franchisor whichever

of the following produces the fewer number of repair orders, all of which must be for repairs made no more than 180 days before the submission:

(A) all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs; or

(B) all repair orders closed during any period of 90 consecutive days.

(b) The submission required under subsection (1)(a)(iii) may consist of:

(i) a single set of repair orders for calculating both the franchisee's prevailing retail labor rate and its parts markup;

(ii) separate sets of repair orders, one for calculating the franchisee's prevailing retail labor rate and the other for calculating its parts markup; or

(iii) a set of repair orders for calculating only the franchisee's prevailing retail labor rate or only its prevailing retail parts markup.

(2) The motor vehicle franchisee shall calculate its prevailing retail labor rate by determining the total charges for labor from the qualified repairs submitted and then dividing that amount by the total number of hours charged for the repairs.

(3) The motor vehicle franchisee shall calculate its prevailing retail parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by the franchisee's total cost of the purchase of those parts including shipping and other charges, subtracting 1, and multiplying by 100 to produce a percentage.

(4) The motor vehicle franchisee shall provide written notice to the motor vehicle franchisor of its prevailing retail labor rate or prevailing retail parts markup calculated in accordance with subsection (2) or (3) if the franchisee seeks to be compensated under subsection (1).

(5) Any discounts must be allocated as indicated on the face of a repair order between parts and labor. If no such allocation is indicated, they must be allocated pro rata. Manufacturer or distributor promotional reward program cash-equivalent pay methods may not be considered discounts.

(6) (a) The prevailing retail labor rate or the prevailing retail parts markup that is declared must go into effect 30 days following the motor vehicle franchisor's receipt of the notice referred to in subsection (2) unless within the 30-day period the franchisor contests the declaration by written notice of objection, received by the motor vehicle franchisee within the 30-day period, that the declared rate or markup is materially inaccurate.

(b) The objection must contain:

(i) a full explanation of any and all reasons that the declared rate is materially inaccurate;

(ii) evidence substantiating each stated reason;

(iii) a copy of all calculations used by the franchisor to demonstrate the material inaccuracy; and

(iv) a proposed adjusted retail labor rate or retail parts rate, as applicable.

(c) The motor vehicle franchisor may not submit more than one notice of objection to the motor vehicle franchisee with respect to any declared labor rate or retail parts markup, except in connection with litigation. After submitting the notice of objection, the franchisor may not add to, expand, supplement, or otherwise modify any element of the objection, including but not limited to its grounds for contesting the labor rate or parts markup, except in connection with litigation.

(d) A revision or supplement to a submission to correct or clarify the submission does not constitute a new submission for any purpose, including but not limited to that of subsection (9).

(7) In a judicial proceeding or a department proceeding involving an application or enforcement of the provisions of 61-4-203, 61-4-204, and 61-4-210(4):

(a) the issue must be limited to whether the labor rate or parts markup submitted by the motor vehicle franchisee was materially inaccurate;

(b) the motor vehicle franchisor has the burden of proof; and

(c) any resolution of the matter must be retroactive to the date 30 days following the franchisor's receipt of the franchisee's submission.

(8) A motor vehicle franchisor may not directly or indirectly:

(a) (i) require a motor vehicle franchisee to establish or alter its labor rate or parts markup by any means or methodology other than as prescribed in 61-4-204; or

(ii) except to object to or rebut a franchisee's declared retail labor rate or parts markup, itself initiate a process to establish or alter that labor rate or parts markup, including but not limited to:

(A) substituting any other purported qualified repair order sample for that submitted by a franchisee, including but not limited to the use, for purposes of establishing or reducing the franchisee's labor rate, of the franchisee's sample submitted for purposes of establishing or increasing its parts markup or the use, for purposes of establishing or reducing the franchisee's parts markup, of the franchisee's sample submitted for purposes of establishing or increasing its labor rate; or

(B) imposing an unduly burdensome or time-consuming method or requiring information that is unduly burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction calculations;

(b) recover or attempt to recover all or any portion of the franchisor's costs for compensating its dealers for warranty labor, parts, or supplies, either by reduction in the amount due or by separate charge or a surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts;

(c) establish or implement a special part number for parts used in warranty work if it results in lower compensation to the franchisee than as calculated in this section;

(d) require, influence, or attempt to influence a franchisee to implement or change the prices for which it sells parts or labor in retail repairs;

(e) take or threaten to take adverse action against a franchisee who seeks to obtain compensation pursuant to this section or dissuade or discourage the franchisee from doing so, including but not limited to:

(i) creating or implementing an obstacle or process that is inconsistent with the franchisor's obligations to the franchisee under this section;

(ii) acting or failing to act, other than in good faith;

(iii) hindering, delaying, or rejecting the proper and timely payment of compensation due under this section to a franchisee;

(iv) establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive regarding compensation due under this section other than in a uniform and consistent manner among the franchisor's franchisees in this state; or

(v) conducting or threatening to conduct any warranty repair, nonwarranty repair, or other service-related audit; or

(f) implement or continue a policy, procedure, or program to any of its franchisees for compensation that is inconsistent with this section.

(9) A motor vehicle franchisee may not submit, to establish or increase rates paid pursuant to subsections (1)(a)(iii) and (1)(b):

- (a) its warranty labor rate more than once in a 12-month period; and
- (b) its warranty parts markup more than once in a 12-month period.

(10) A recreational motor vehicle franchisee's warranty compensation for parts means actual wholesale cost plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the recreational motor vehicle franchisor.

(11) If a motor vehicle franchisor supplies a part or parts to a motor vehicle franchisee at no cost or at a reduced cost for use in fulfilling a warranty, the franchisor must compensate the franchisee for the franchisee's cost of the part, if any, plus an amount equal to the franchisee's prevailing retail parts markup, multiplied by the fair wholesale value of the part. The fair wholesale value of the part is the greater of:

- (a) the amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee;
- (b) the cost of the part shown in a current or prior established price schedule of the franchisor; or
- (c) the cost of a substantially identical part shown in a current or prior established price schedule of the franchisor.

(12) (a) The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and labor rendered under a warranty within 30 days after approval of a claim for reimbursement.

(b) All claims for reimbursement must be approved or disapproved within 30 days after receipt of the claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee must be notified in writing of the grounds for the disapproval. A claim that has been approved and paid may not be charged back to the franchisee unless it can be shown that the claim was false or fraudulent, that the labor was not properly performed, or that the parts or labor were unnecessary to correct the defective condition.

(c) 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 known to the dealer at the time of submission of the claim.

(d) 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.

(e) A franchisor may not audit a claim after the expiration of 12 months following the payment of the claim.

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

(a) "Labor" means work or service performed, including that of a diagnostic character, with respect to repair of a motor vehicle.

(b) "Parts" means original or replacement parts, accessories, and components with respect to a motor vehicle, including engine, transmission, and other parts assemblies.

(c) (i) "Qualified repair" means a repair to a vehicle that:

(A) would have come within the motor vehicle franchisor's new vehicle warranty but for the vehicle having exceeded the time or mileage limit of the warranty;

(B) does not otherwise constitute warranty work; and

(C) does not constitute any of the work encompassed by subsection (13)(c)(ii).

(ii) The term does not include:

(A) routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners, unless provided in the course of and related to a repair;

(B) replacements of or work on tires, wheels, or elements related to either tires or wheels, including but not limited to vehicle alignments and tire or wheel rotations;

(C) repairs for which volume discounts have been negotiated with government agencies, insurers, extended warranty or service contract providers, or other third-party payors;

(D) repairs that are the subject of motor vehicle franchisor special events, promotions, or service campaigns or are otherwise subject to motor vehicle franchisor discounts;

(E) repairs of motor vehicles owned by the dealer or an employee of the dealer;

(F) installations of accessories;

(G) repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate acts;

(H) safety or vehicle emission inspections required by law;

(I) vehicle reconditioning;

(J) parts sold at wholesale;

(K) repairs using aftermarket parts; or

(L) goodwill repairs or replacements approved and reimbursed by the motor vehicle franchisor.

(d) "Qualified repair order" means a repair order that encompasses, in whole or in part, a qualified repair or repairs.

(e) "Repair order" means an invoice paid by a retail customer and closed as of the time of submission, encompassing one or more repairs to or other work on a vehicle, and reflecting, in the case of a prevailing retail parts markup submission, the cost of each part and its sale price and, in the case of a prevailing retail labor rate submission, the labor hours allocated to each job and the sale price of the labor. The invoice may be submitted in electronic form.

(f) "Warranty" means, in addition to a new motor vehicle warranty, predelivery preparation, a recall, or a certified preowned warranty, in each case issued or administered by a motor vehicle franchisor."

**Section 18.** Section 61-14-101, MCA, is amended to read:

**"61-14-101. Rulemaking authority – vehicle services.** (1) The department shall adopt rules for the registration of motor vehicles, including:

(a) simultaneous registration of multiple motor vehicles that have common ownership;

(b) verification of compliance with 61-6-301 before registering or renewing a registration of a vehicle or issuing new license plates required by 61-3-332(3);

(c) devising a method to place license plates on the 5-year reissuance cycle to minimize production peaks and valleys;

(d) early registration renewals when an owner of a motor vehicle presents extenuating circumstances; and

(e) automated mailing of license plates by the department or its authorized agent, including an agent under contract with the department pursuant to 61-3-338.

(2) The department shall adopt rules to procure compliance with all of the laws of the state regulating the issuance of motor vehicle, trailer, semitrailer, or pole trailer licenses relating to the use and operation of motor vehicles,

trailers, semitrailers, or pole trailers before issuing the lettered license plates pursuant to 61-3-423.

(3) The department may adopt rules to establish vehicle brands or carried-forward brands according to 61-3-202.

(4) The department may adopt rules governing affidavit and bond for certificate of title pursuant to 61-3-208.

(5) The department may adopt rules for the implementation and administration of temporary registration permits, pursuant to 61-3-224, including issuance to:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle or vessel under Title 61, chapter 3;

(b) the owner of a salvage vehicle or a vehicle requiring a state-assigned vehicle identification number to move the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-107 or 61-3-212;

(c) the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered in this state for operation of the vehicle while awaiting production and receipt of special or duplicate license plates ordered for a vehicle under Title 61, chapter 3;

(d) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence;

(e) a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state;

(f) a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession;

(g) an insurer or its agent to move a motor vehicle or trailer to auction following acquisition of the vehicle by the insurer as a result of the settlement of an insurance claim;

(h) a nonresident owner to temporarily operate a quadricycle or motorcycle designed for off-road recreational use on the highways of this state when the quadricycle or motorcycle designed for off-road recreational use is equipped for use on the highways as prescribed in Title 61, chapter 9, but the quadricycle or motorcycle designated for off-road recreational use is not registered or is only registered for off-road use in the nonresident's home state; or

(i) a new owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certification of title.

(6) The department may adopt rules for the assessment and collection of registration fees on light vehicles under 61-3-321 and 61-3-562, including the proration of fees under 61-3-520 and criteria for determining the motor vehicle's age.

(7) The department may adopt rules for imposing and collecting fees in lieu of tax, including:

(a) the proration of fees in lieu of tax under 61-3-520 on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(b) criteria for determining the motor vehicle's age; and

(c) criteria for determining the manufacturer's rated capacity.

(8) The department may adopt rules, pursuant to Title 61, chapter 3, for the administration of fees for trailers, semitrailers, and pole trailers, including criteria for determining a trailer's age and weight.

(9) The department shall adopt rules for generic specialty license plates issued pursuant to 61-3-472 through 61-3-481, including:

(a) the minimum and maximum number of characters that a generic specialty license plate may display;

(b) the general placement of the sponsor's name, identifying phrase, and graphic; and

(c) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(10) The department may adopt rules governing dealers pursuant to the provisions of Title 61, chapter 4, including:

(a) the application and issuance of dealer licenses, including the qualifications of dealers, and the staggering of expiration dates pursuant to 61-4-101;

(b) the issuance of dealer, demonstrator, *loaner*, courtesy, and transit plates pursuant to 61-4-102, 61-4-128 through 61-4-130, 61-4-301, 61-4-307, and 61-4-308;

(c) the application and process for renewing a dealer license pursuant to 61-4-124; and

(d) governing the regulation of persons required to be licensed pursuant to Title 61, chapter 4, part 2.

(11) The department may adopt rules for local option tax appeals pursuant to 15-15-201.

(12) The department may adopt rules to implement any other provision of this title."

**Section 19. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [sections 1 through 4].

**Section 20. 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 21. Effective date.** [This act] is effective on passage and approval.

Approved April 29, 2021

## CHAPTER NO. 390

[HB 598]

AN ACT GENERALLY REVISING PARKING LAWS; SUBSTITUTING A DISABILITY PARKING PERMIT FOR A SPECIAL PARKING PERMIT; SUBSTITUTING AN ACCESSIBLE PARKING SPACE FOR A SPECIAL PARKING SPACE; REVISING REQUIREMENTS FOR ACCESSIBLE PARKING SPACES; AND AMENDING SECTIONS 7-5-2109, 7-5-4104, 49-4-301, 49-4-302, 49-4-303, 49-4-304, 49-4-305, 49-4-306, 49-4-307, 49-4-310, 61-3-332, AND 61-3-426, MCA.

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

**Section 1.** Section 7-5-2109, MCA, is amended to read:

**7-5-2109. County control of litter.** (1) (a) Except as provided in 7-5-2112, a governing body of a county may regulate, control, and prohibit littering on any county road and on land within the county by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107. The ordinance may apply to portions of the county and may apply to persons other than the owners of the property on which littering occurs.

(b) The ordinance does not apply to lead, copper, or brass deposits directly resulting from shooting activities at a shooting range.

(c) The ordinance does not apply to a “notice of violation” card placed on a motor vehicle illegally parked in a ~~disability~~ *an accessible* parking space.

(2) Except as provided in 7-5-2112, the governing body of a county may establish a fine not to exceed \$200 as a penalty for violation of the ordinance referred to in subsection (1). A violation of the ordinance may not be punishable by imprisonment.”

**Section 2.** Section 7-5-4104, MCA, is amended to read:

**7-5-4104. Control of nuisances – exception.** (1) The city or town council has power to:

(a) define and abate nuisances and impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises that they occupy or control;

(b) regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement; and

(c) enforce the penalty for violations of 7-5-4113 and post copies of 7-5-4113 in conspicuous locations in the municipality.

(2) The city or town council may not prohibit the placing of a “notice of violation” card on a motor vehicle illegally parked in a ~~disability~~ *an accessible* parking space.”

**Section 3.** Section 49-4-301, MCA, is amended to read:

**49-4-301. Eligibility for ~~special~~ *disability* parking permit.**

(1) The department of justice shall issue a ~~special~~ *disability* parking permit to a person who has a disability that limits or impairs the person’s mobility and for whom a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, submits a certification to the department, by electronic or other means prescribed by the department, that the person meets one of the following criteria:

(a) cannot walk 200 feet without stopping to rest;

(b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;

(c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) uses portable oxygen;

(e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person’s functional limitations are classified as class III or IV under standards accepted by the American heart association; or

(g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person’s mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) (a) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a ~~special~~ *disability* license plate *displaying a wheelchair* under 61-3-332(9). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a later paper or electronic certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(b) A person who meets one of the criteria in subsection (1) for what is considered to be a permanent condition, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, may, by application to the department, by electronic or other means prescribed by the department, be issued a ~~special~~ *disability* license plate *displaying a wheelchair* under 61-3-332(9) and is not required to reapply for the ~~special~~ *disability* license plate when the vehicle is reregistered.

(3) The department of justice may issue ~~special~~ *disability* parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the ~~special~~ *accessible* parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

**Section 4.** 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 accessible 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~~ *an accessible parking space designated for use by 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 accessible 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 or motorcycle may not stop, stand, or park within an accessible parking space designated for use by a person with a disability as provided in 49-4-304 unless:~~

(a) (i) the vehicle is lawfully displaying a *disability* 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 ~~special~~ *an* inscribed license plate displaying the letters "DV" issued under 61-3-458(4)(b) or (4)(i) or displaying a wheelchair as provided in 61-3-332(9); and

(b)(ii) the ~~reserved designated accessible~~ parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle; or

(b) *the vehicle is being used to transport a person with a disability and is temporarily stopping, standing, or parking in an accessible parking space designated for use by a person with a disability as provided in 49-4-304 only for the purpose of loading or unloading the person with a disability.*

(3) *A vehicle or motorcycle may not stop, stand, or park within an access aisle designated for use by a person with a disability as provided in 49-4-304,*

regardless of whether a vehicle is lawfully displaying a disability parking permit issued under this part, a distinguishing license plate, or a 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 an inscribed license plate displaying the letters "DV" issued under 61-3-458(4)(b) or (4)(i) or displaying a wheelchair as provided in 61-3-332(9).

(4) Notice of the penalty for violation of this part is not required at the site of an accessible parking space.

(3)(5) The governing body of a city, town, or county may exempt vehicles lawfully displaying a disability parking permits permit issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters "DV" issued under 61-3-458(4)(b) or (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)(6) (a) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may shall impose all, but not less than all, of the following requirements applicable requirements set forth in 28 CFR 36 as of February 10, 2021, with respect to any special accessible parking space constructed after September 30, 1985, and reserved for a person with a disability or a permit holder on ways of this state open to the public, as defined in 61-8-101, or in the right-of-way, as defined in 60-1-103.

(b) In addition to requirements imposed under subsection (6)(a), an accessible parking space must be maintained and be free of any obstructions, including but not limited to snow, shipping pallets, and shopping carts. However, no person or business may be cited for violation of this subsection (6)(b) without an initial warning providing a reasonable amount of time to clear an obstruction.:

(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 5.** Section 49-4-303, MCA, is amended to read:

**"49-4-303. Issuance of interim special disability parking permit.**

A licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, may issue an interim special disability parking permit, in a form authorized by the department, to a person who has a disability that limits or impairs the person's mobility and upon whose

behalf the physician, chiropractor, or advanced practice registered nurse has submitted a request for a *special disability* parking permit under 49-4-301. The interim *special disability* parking permit is valid only in Montana, may not be renewed or extended, and expires 5 days from the date of issuance.”

**Section 6.** Section 49-4-304, MCA, is amended to read:

**“49-4-304. Special Disability license plate or placard to be provided and displayed – additional placards allowed – rulemaking required.**

(1) Except as authorized in 49-4-303, unless the department of justice issued a *special disability* license plate under 61-3-332(9) or 61-3-458(4)(b) or (4)(i) indicating a *special an accessible* parking privilege, the department shall provide a placard to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The *special disability* license plate must be affixed to the vehicle according to 61-3-301, or the placard 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 disability* 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 disability* parking permit may apply to the department for one or more placards.

(3) The department shall issue up to two placards to eligible individuals and may issue additional placards. The department shall adopt rules to determine the process for an individual to request additional placards.

(4) 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 placard to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(5) The placard must bear a representation of a wheelchair as the symbol of a person with a disability.”

**Section 7.** Section 49-4-305, MCA, is amended to read:

**“49-4-305. Expiration of permit.** (1) Except as provided in 49-4-303 and subsection (2) of this section, a *special disability* parking permit expires on the occurrence of either of the following:

(a) 3 5 years from the date of issuance, unless the permit was issued to a person who has a condition expected to improve within 6 months. A person may renew a permit if a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, certifies that the person’s mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met.

(b) certification by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse that the person’s mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse that the person’s mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met; or

(c) *October 1, 2022.*”

**Section 8.** Section 49-4-306, MCA, is amended to read:

**“49-4-306. Department of justice to publicize permit.** (1) The department of justice shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a *special disability* parking permit.

(2) The department of justice shall budget sufficient funds to accomplish the requirements of subsection (1).”

**Section 9.** Section 49-4-307, MCA, is amended to read:

**“49-4-307. Penalty.** A person who parks a motor vehicle *or motorcycle* in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of \$100. However, a person charged with violating 49-4-302(2) may not be convicted if within ~~24 hours~~ *3 business days* the person produces in court or the office of the arresting officer a *special disability* parking permit that was previously issued to the person and that is valid at the time of arrest.”

**Section 10.** Section 49-4-310, MCA, is amended to read:

**“49-4-310. Special Disability parking permit for long-term care facility.** A long-term care facility, as defined in 37-9-101, may apply for a permit issued for *special accessible* parking spaces under 49-4-302. If granted, the permit entitles the facility to the privileges granted in 49-4-302.”

**Section 11.** Section 61-3-332, MCA, is amended to read:

**“61-3-332. Standard license plates.** (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word “permanent” on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) New license plates issued under 61-3-303 or this section must be a standard license plate design first issued in 1989 or later or current collegiate or generic specialty license plate designs. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with new license plates if, upon renewal of registration under 61-3-312, the license plates are 5 or more years old or will become older than 5 years during the registration period. New license plates must be issued in accordance with the implementation schedule adopted by the department under 61-14-101.

(iii) A vehicle owner may elect to keep the same license plate number from license plates issued before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) (a) All license plates must be metal and treated with a reflectorized background material according to specifications prescribed by the department. The word "Montana" must be placed on each license plate and, except for license plates that are 4 inches wide and 7 inches in length, the outline of the state of Montana must be used as a distinctive border on each standard license plate.

(b) Plates for semitrailers, travel trailers, pole trailers, trailers with a declared weight of 6,000 pounds or more, and motor vehicles, other than motorcycles and quadricycles, must be 6 inches wide and 12 inches in length.

(c) Plates for motorcycles and quadricycles must be 4 inches wide and 7 inches in length.

(d) The department shall issue plates that are 4 inches wide and 7 inches in length for trailers with a declared weight of less than 6,000 pounds unless a person registering a trailer with a declared weight of less than 6,000 pounds requests plates that are 6 inches wide and 12 inches in length. A person registering a trailer shall pay all applicable fees for the plates chosen.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, fleet license plates, and standard license plates that are 4 inches wide and 7 inches in length, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a ~~special~~ *disability* parking permit under 49-4-301 may and a person with a low-speed restricted driver's license operating a low-speed electric vehicle or golf cart as provided in 61-5-122 must, upon written application on a form prescribed by the department, be issued a ~~special~~ *disability* license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce ~~special~~ *disability* parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid ~~special~~ *disability* parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a *special disability* license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.”

**Section 12.** 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(4) or with an application for *special disability* 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(4).”

Approved April 29, 2021

## CHAPTER NO. 391

[SB 83]

AN ACT REVISING SPECIAL LIEN LAWS; ALLOWING A NONPOSSESSORY SPECIAL LIEN ON IMPLEMENTS OF HUSBANDRY, CONSTRUCTION EQUIPMENT, FORESTRY EQUIPMENT, AND MOTORIZED LAWN CARE AND LANDSCAPING EQUIPMENT; PROVIDING FOR ENFORCEMENT OF NONPOSSESSORY SPECIAL LIENS; AND AMENDING SECTIONS 71-3-1201 AND 71-3-1203, MCA.

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

**Section 1.** Section 71-3-1201, MCA, is amended to read:

**“71-3-1201. Liens for service – towing and storage lien – extension of lien to certain personal property contained in motor vehicle that is subject to lien – nonpossessory special liens.** (1) If there is an express or implied contract for collecting, processing, packaging, or storing embryos or semen from livestock, a reproductive technology business to whom embryos or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

(2) (a) A person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on the article. *Except as provided in subsection (2)(c),* the lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage.

(b) Any personal property that is in a motor vehicle that is subject to a lien as provided in subsection (2)(a) is also subject to the lien, except for the following:

- (i) food items;
- (ii) perishable goods;
- (iii) prescription items;
- (iv) operators' licenses and other identifying documents;
- (v) cash, credit cards, debit cards, checks, or checkbooks;
- (vi) personal records, legal records, and business records;
- (vii) child safety items; and

(viii) wallets, purses, bags, or other containers that contain the items listed in subsections (2)(b)(iv) through (2)(b)(vi).

(c) *A special lien is not dependent on possession if the person asserting the lien gives the owner or the owner's agent, or attaches to the article, a document identifying the article and its owner, the services performed, the cost of those services, the cost to the owner of any parts, accessories, or equipment installed, and the signature and contact information of the person asserting the nonpossessory special lien. The person desiring to assert a special lien upon the property must also file a financing statement in the office designated for filing as provided in 30-9A-501. A nonpossessory special lien may be asserted on:*

- (i) implements of husbandry as defined in 61-1-101;
- (ii) construction equipment as defined in 61-10-102;
- (iii) motorized lawn care and landscaping equipment; and
- (iv) forestry equipment.

(d) *The special lien created under subsection (2)(c) may not take precedence over perfected security interests under the Uniform Commercial Code--Secured Transactions or other recorded liens on the property involved unless, within 30 days from the time of the completion of the service, repair, or improvement of the property, the person desiring to assert a special lien upon the property gives notice in writing to the secured party or other lienholder stating the intention to assert a special lien on the property under the terms of subsection (2)(c) and stating the nature and approximate amount of the work performed or other services furnished and the cost of any parts, accessories, or equipment installed. Service may be made either by personal service or by mailing by registered or certified mail a copy of the notice to the secured party or other lienholder at the last-known post office address. Service must be considered complete upon the deposit of the notice in the post office.*

**Section 2.** Section 71-3-1203, MCA, is amended to read:

**“71-3-1203. Enforcement of lien – sale.** If payment for work, labor, or services performed or feed or material furnished is not made within 30 days after the performance of the work, labor, or services or furnishing of the feed or material, the lienor under the provisions of this part may enforce the lien in the following manner:

(1) The lienor may file a lien enforcement action in the district court of the county in which the:

(a) contract between the lienor and the owner of the property was entered into;

(b) owner resided at the time the lien enforcement action commenced; or

(c) property is located.

(2) When a claim is made under this section *for a lien other than a nonpossessory special lien*, an affidavit must be made by the lienor claiming the property or by someone on the lienor's behalf, stating:

(a) the facts that the lienor performed a service for the property owner entitling the lienor to a lien on the owner's property pursuant to 71-3-1201;

(b) that the service described in subsection (2)(a) was performed at the written or verbal request of the owner or owner's agent;

(c) a particular property upon which the lien is claimed; and

(d) an itemized list of the charges that are due and unpaid under the lien.

(3) *When a claim is made under this section for a nonpossessory special lien, the lienor shall submit to the court:*

(a) *a copy of the document required by 71-3-1201(2)(c); and*

(b) *a statement of the charges that are due and unpaid under the lien.*

(3)(4) (a) If satisfactory, the court shall order the owner of the property to show cause why the property should not be sold pursuant to the procedures in this section. The order must include the date and time for a hearing. The hearing may not be held more than 20 working days after the date of the issuance of the order.

(b) The court order provided for in subsection (3)(a) (4)(a) must be served pursuant to the Montana Rules of Civil Procedure on the owner at least 5 days before the hearing date.

(4)(5) The lienor shall deliver to the sheriff of the county in which the property is located a copy of the court's lien enforcement judgment.

(5)(6) Upon receipt of the court's lien enforcement judgment, the sheriff shall advertise and sell at public auction as much of the property covered by the lien as will satisfy the lien.

(6)(7) The sale must be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

(7)(8) The owner of the property may request a hearing in district court to contest any matter regarding the sale of the property.

(8)(9) The sheriff shall apply the proceeds of the sale to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or a part that is required to discharge the claims, must be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against the property, and the balance of the proceeds must be turned over to the owner of the property."

Approved April 29, 2021

## CHAPTER NO. 392

[SB 106]

AN ACT CREATING A LICENSE AND QUALIFICATIONS FOR VETERINARY TECHNICIANS UNDER THE BOARD OF VETERINARY MEDICINE; OUTLINING A SCOPE OF PRACTICE FOR LICENSED VETERINARY TECHNICIANS; PROVIDING A PENALTY FOR FALSELY CLAIMING TO BE A LICENSED VETERINARY TECHNICIAN; ADDING A MEMBER TO THE BOARD OF VETERINARY MEDICINE TO REPRESENT LICENSED VETERINARY TECHNICIANS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-1742, 37-18-101, 37-18-102, 37-18-104, AND 37-18-502, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. License required for veterinary technicians – requirements – license renewal – use of initials or terms.** (1) (a) An individual seeking to practice as a veterinary technician in this state must be licensed as a veterinary technician by the board.

- (2) To be eligible for licensure as a veterinary technician, an applicant:
- (a) shall file an application on a form furnished by the department and pay fees as prescribed by rule;
  - (b) must meet the requirements of subsection (3); and
  - (c) must meet additional requirements set by the board by rule.
- (3) (a) Except as provided in subsection (3)(b), an applicant must be a graduate of a program accredited by the American veterinary medical association as determined by board rule and pass an examination as prescribed by the board.
- (b) An applicant who does not meet the qualifications required in subsection (3)(a) shall:
- (i) obtain a minimum of 4,500 hours of experience equivalent to that of a licensed veterinary technician; and
  - (ii) pass an examination as prescribed by the board.
- (4) Subject to review by the board, a person who does not hold an active license as a veterinary technician may not state or imply orally, in writing, or in print that the person is a “licensed veterinary technician” or use the initials “LVT”.

**Section 2. Licensed veterinary technician scope of practice.** (1) A licensed veterinary technician may, under written authorization and direction of a veterinarian licensed under this chapter, administer or dispense drugs, medicines, or appliances and perform procedures as provided by rule.

(2) In an emergency, a licensed veterinary technician is subject to the authority of the supervising licensed veterinarian as provided in [section 4].

**Section 3. Penalties.** (1) A person found guilty by the board of violating use of the term “licensed veterinary technician” or use of the initials “LVT” to describe the person’s qualifications when not licensed as a veterinary technician is guilty of a misdemeanor.

(2) The penalties under 37-18-501 apply to a licensed veterinary technician who performs a procedure that is not within the scope of practice allowed to a licensed veterinary technician as provided in [section 2].

**Section 4. Supervision of licensed veterinary technician – failure to comply.** (1) A veterinarian licensed under 37-18-302 is responsible for determining whether tasks delegated to a licensed veterinary technician are:

- (a) within the employees’ training, expertise, and skills;
- (b) allowed by rule under direct supervision, immediate supervision, or indirect supervision; and
- (c) clearly defined by written orders, established office protocols, or verbal directions in the case of an emergency.

(2) Even in a case of emergency, a veterinarian licensed under 37-18-302 is responsible for authorizing the licensed veterinary technician to perform only those duties within the employees’ scope of practice as provided in [section 2] or by rule.

(3) A veterinarian subject to this section may be cited for unprofessional conduct for failure to comply with this section.

**Section 5.** Section 2-15-1742, MCA, is amended to read:

**“2-15-1742. Board of veterinary medicine.** (1) There is a board of veterinary medicine.

(2) The board consists of ~~six seven~~ members appointed by the governor with the consent of the senate, ~~five of whom~~ *Five members* must be licensed veterinarians *licensed under Title 37, chapter 18* and ~~one of whom, one member~~ *must be a veterinary technician licensed under Title 37, chapter 18, and one member* must be a public member who is a consumer of veterinary services

and ~~who may~~ is not be a licensee of the board or of any other board under the department of labor and industry.

(3) (a) Each veterinarian *board* member must be a reputable licensed veterinarian who has graduated from a college that is authorized by law to confer degrees and that has educational standards equal to those approved by the American veterinary medical association. Each veterinarian *board* member must have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before appointment.

(b) *The individual initially appointed as the licensed veterinary technician board member must have practiced in this state for at least 5 years prior to [the effective date of this act] and shall obtain a license under Title 37, chapter 18, as a licensed veterinary technician by the time the individual becomes a board member. An individual appointed subsequent to the initial appointment must only meet the requirement that the individual be a veterinary technician licensed under Title 37, chapter 18.*

(4) (a) Each member ~~shall serve for a term of~~ is 5 years. A member may be reappointed.

(b) The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

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

**Section 6.** Section 37-18-101, MCA, is amended to read:

**"37-18-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1742.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17."

(3) *"Direct supervision" means direction on an animal patient's care provided by a veterinarian licensed under this chapter who is on the premises and readily available to take over direct care or to consult on animal care directly with a licensed veterinary technician.*

(4) *"Emergency" means a life-threatening condition in which immediate treatment is necessary to sustain life or, if death is imminent, to relieve pain and suffering.*

(5) *"Immediate supervision" means direction on an animal patient's care provided by a veterinarian licensed under this chapter who is within direct eyesight and hearing range of a licensed veterinary technician.*

(6) *"Indirect supervision" means direction on an animal patient's care provided by a veterinarian licensed under this chapter who is not on the premises but is available to perform the duties of a licensed veterinarian by maintaining direct communication with a licensed veterinary technician and who is in compliance with [section 4]."*

**Section 7.** Section 37-18-102, MCA, is amended to read:

**"37-18-102. Veterinary medicine defined.** (1) A person is considered to be practicing veterinary medicine when the person does any of the following:

(a) represents to the public that the person is a veterinarian or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(4), for compensation, in any manner how to perform any acts that constitute the practice of veterinary medicine.

(2) Subsection (1)(e) may not in any way be construed to prohibit the pregnancy testing by any person of the person's own farm animals or by the person's employees regularly employed in the conduct of the person's business or by other persons whose services are rendered gratuitously.

(3) *A licensed veterinary technician engaged in tasks as provided in [section 2] is practicing only those forms of veterinary medicine allowed by law or by rule and must be under the direct, immediate, or indirect supervision of a licensed veterinarian as provided by law or by rule promulgated by the board or working under written instructions within the scope of practice allowed under [section 2] or by rule.*

~~(3)~~(4) This section may not be construed as modifying, amending, altering, or repealing any part of 37-18-104."

**Section 8.** Section 37-18-104, MCA, is amended to read:

**"37-18-104. Exemptions – rules.** (1) This chapter does not apply to:

(a) a veterinarian in the performance of the veterinarian's official duties, either civil or military, in the service of the United States unless the veterinarian is engaged in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

(c) a veterinarian practicing in another state or country and authorized under the laws of that state or country to practice veterinary medicine, whose practice in this state is limited to an occasional case as that term is defined in board rule. *The board may, by rule, define conditions in which a veterinary technician licensed or registered in another state may engage in occasional veterinary technician tasks in this state, as provided in [section 2].*

(d) the employment of a veterinary medical student who has successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association, if the student is employed by and works under the immediate supervision of a veterinarian licensed and registered under this chapter; or

(e) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the *indirect* supervision of a veterinarian licensed and residing in Montana. At

a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

- (a) minimum education requirements;
- (b) minimum requirements of practical experience;
- (c) continuing education requirements;
- (d) limitations on practices and procedures that may be performed by certified individuals;
- (e) the use of specific drugs necessary for safe and proper practice of certified procedures;
- (f) content and administration of the certification test, including written and practical testing;
- (g) application and reexamination procedures; and
- (h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the *direct, immediate, or indirect* supervision of the employing veterinarian. *The board shall adopt rules regarding which veterinary practices may be performed under direct, immediate, or indirect supervision by a licensed veterinary technician.*

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

(8) This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance authorized by the board for the purpose of euthanasia pursuant to part 6 of this chapter."

**Section 9.** Section 37-18-502, MCA, is amended to read:

**"37-18-502. Injunction.** The board or any person may bring an action in the district court to enjoin a person who is not licensed from engaging in the practice of veterinary medicine *or the practice of a licensed veterinary technician* unless otherwise exempted under 37-18-104(4). ~~If the A court that finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall~~ *may* enter an order restraining the defendant from the violation, without regard to any criminal provisions of Title 37, chapter 18."

**Section 10. Codification instruction.** (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 37, chapter 18, and the provisions of Title 37, chapter 18, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 37, chapter 18, part 3, and the provisions of Title 37, chapter 18, part 3, apply to [section 4].

**Section 11. Effective date.** [This act] is effective January 1, 2023.

Approved April 29, 2021

**CHAPTER NO. 393**

[SB 121]

AN ACT UPDATING THE DEFINITION OF ACUPUNCTURE TO REFLECT MODERN TECHNIQUES AND MODALITIES; AMENDING SECTION 37-13-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 37-13-103, MCA, is amended to read:

**“37-13-103. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) ~~“Acupuncture” means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. The term includes the use of acupressure and the use of oriental food remedies and herbs: a form of primary health care that is developed from traditional oriental and modern medical philosophies for providing evaluation, diagnosis, and treatment of human conditions, ailments, diseases, injuries, or infirmities. The term includes the manual, mechanical, injection, thermal, vibrational, electrical, and electromagnetic stimulation and treatment of traditional and modern acupuncture points, trigger points, motor points, and ashi points on the human body for promotion, maintenance, and restoration of health and prevention of disease. The term also includes but is not limited to auricular acupuncture, body acupuncture, distal acupuncture, dry needling, point bleeding, and point injection.~~

(b) *Adjunctive therapies included in, but not exclusive to, acupuncture include:*

(i) *herbal and nutritional recommendations;*

(ii) *therapeutic exercise, including but not limited to taiji and qigong;*

(iii) *manual therapy, including but not limited to bodywork, tui na, and shiatsu; and*

(iv) *other therapies based on traditional oriental and modern medical theory, as taught in accredited acupuncture programs.*

(2) “Acupuncturist” means a natural person licensed by the board of medical examiners to practice acupuncture.

(3) “Board” means the Montana state board of medical examiners.

(4) “School of acupuncture” means a school in which acupuncture is taught that has been recognized and designated by the board of medical examiners.”

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

Approved April 29, 2021

**CHAPTER NO. 394**

[SB 185]

AN ACT GENERALLY REVISING THE POWERS OF THE GOVERNOR TO SUSPEND CERTAIN STATUTES DURING AN EMERGENCY; PROHIBITING A GOVERNOR FROM SUSPENDING A STATUTE THAT AFFECTS THE EXERCISE OF AN INDIVIDUAL'S CONSTITUTIONAL RIGHTS; AND AMENDING SECTION 10-3-104, MCA.

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

**Section 1.** Section 10-3-104, MCA, is amended to read:

**“10-3-104. General authority of governor.** (1) The governor is responsible for carrying out parts 1 through 4 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, the governor may:

(a) *except as provided in subsection (4)*, suspend the provisions of ~~any~~ a regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or ~~disaster~~. *disaster*.

(4) *The governor may not suspend a statute that affects the exercise of an individual’s constitutional rights under the United States constitution or the Montana constitution, including 13-19-104(3), even if the statute is otherwise considered a regulatory statute prescribing the procedures for conduct of state business.”*

Approved April 29, 2021

## CHAPTER NO. 395

[SB 247]

AN ACT REVISING ALCOHOL LAWS RELATING TO UNIVERSITIES AND POSTSECONDARY INSTITUTIONS; ALLOWING A UNIT OF THE MONTANA UNIVERSITY SYSTEM OR A POSTSECONDARY INSTITUTION IN MONTANA TO CONTRACT WITH AN ALCOHOL LICENSEE TO SERVE ALCOHOL AT A SPORTING EVENT HELD ON UNIVERSITY PROPERTY; AMENDING SECTIONS 16-3-103, 16-4-111, AND 16-4-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Catering endorsement – university or college sporting events – revenue sharing.** (1) A Montana university may contract with a licensed entity with a catering endorsement under 16-4-111 to serve beer and wine or under 16-4-204 to serve liquor, beer, and wine at a sporting event held by the Montana university.

(2) The licensee may contract with the Montana university relating to the revenue sharing as permitted in 16-4-111 and 16-4-204.

(3) For the purposes of this section, the term “Montana university” means:

(a) a unit of the Montana university system as defined in 20-25-201; or

(b) any other postsecondary institution in the state.

**Section 2.** Section 16-3-103, MCA, is amended to read:

**“16-3-103. Unlawful sales solicitation or advertising – exceptions.**

(1) A person within the state may not:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless permitted to do so under rules that are promulgated by the department to govern the activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with the rules.

(2) This section does not apply to:

(a) the department, any act of the department, any agency liquor store;

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of employment as the agent, operator, or employee; or

(c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to 16-4-111 or 16-4-204; or

(d) *the sale of alcohol at a sporting event conducted at a Montana university as provided in [section 1].”*

**Section 3.** Section 16-4-111, MCA, is amended to read:

**“16-4-111. Catering endorsement for beer and wine licensees.**

(1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of \$200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee’s regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of \$35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) (a) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(b) *A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a sporting event conducted on the premises of a Montana university as provided in [section 1] authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.*

(8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, *a Montana university as provided in [section 1]*, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.”

**Section 4.** Section 16-4-204, MCA, is amended to read:

**“16-4-204. Transfer – catering endorsement – competitive bidding – rulemaking.** (1) (a) Except as provided in subsection (3), a license may be transferred to a new owner and to a location outside the quota area where the license is currently located only when the following criteria are met:

(i) the total number of all-beverages licenses in the current quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area’s quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within 5 miles of its corporate limits, by more than 43%; or

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by a transfer.

(b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a competitive bidding process is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(2) When the department determines that a license may be transferred from one quota area to another under subsection (1), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to purchase and transfer a license.

(3) A license within an incorporated quota area may be transferred to a new owner and to a new unincorporated location within the same county on application to and with consent of the department when the total number of all-beverages licenses in the current quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(4) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(5) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event on premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of \$250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (5) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of \$35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

*(h) A catering endorsement issued for the purpose of selling and serving liquor or beer and wine at a sporting event conducted on the premises of a Montana university as provided in [section 1] authorizes the licensee to sell and serve liquor or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.*

*(h)(i) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana university as provided in [section 1], or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.*

(6) The department may adopt rules to implement this section."

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

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

Approved April 29, 2021

## CHAPTER NO. 396

[SB 248]

AN ACT ESTABLISHING STUDENT-ATHLETE RIGHTS AND PROTECTIONS; ENSURING THAT A STUDENT-ATHLETE CAN EARN COMPENSATION FOR THE USE OF THE STUDENT-ATHLETE'S NAME, IMAGE, OR LIKENESS; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Student-athlete rights and protections.** (1) As used in this section:

(a) "Postsecondary institution" means a 2-year or 4-year public or private college or university located in the state.

(b) (i) "Student-athlete rights" means the rights of a student-athlete enrolled in a postsecondary institution to earn compensation for the use of the student-athlete's name, image, or likeness and to contract with and retain professional representation of an athlete agent.

(ii) The term does not include a right to receive compensation from a postsecondary institution.

(2) Except as provided subsections (3) through (6), a postsecondary institution or an athletic association, conference, or organization with authority over intercollegiate sports may not:

(a) prohibit, prevent, or restrict a student-athlete from exercising the student-athlete's rights;

(b) penalize or retaliate against a student-athlete for exercising the student-athlete's rights;

(c) prohibit a student-athlete from participating in an intercollegiate sport for exercising the student-athlete's rights; or

(d) subject to subsection (5)(a), impose an eligibility requirement on a scholarship or grant that requires a student-athlete to refrain from exercising the student-athlete's rights.

(3) (a) A student-athlete may not enter into a contract that provides compensation to the student-athlete for the use of the student-athlete's name, image, or likeness if terms of the contract conflict with the student-athlete's team rules or with terms of a contract entered into between the student-athlete's postsecondary institution and a third party, except the team rules or a contract entered into between the postsecondary institution and a third party may not prevent a student-athlete from earning compensation for the use of the student-athlete's name, image, or likeness when not engaged in official team activities.

(b) A student-athlete who enters into a contract that provides compensation to the student-athlete for the use of the student-athlete's name, image, or likeness shall disclose the contract to an official of the postsecondary institution if the student-athlete is a team member or, if the student-athlete is not a team member, at the time the student-athlete seeks to become a team member.

(c) If a postsecondary institution asserts that the terms of the contract conflict with the team rules or with terms of a contract entered into between the student-athlete's postsecondary institution and a third party, the unit shall disclose the specific rules or terms asserted to be in conflict to the student-athlete or to the student-athlete's professional representative or athlete agent if the student-athlete is represented.

(4) A postsecondary institution or an athletic association, conference, or organization with authority over intercollegiate sports may not provide to a prospective or current student-athlete compensation for use of the student-athlete's name, image, or likeness.

(5) A postsecondary school may:

(a) include provisions in scholarship agreements allowing the postsecondary school to use the athlete's name, image, and likeness;

(b) prohibit the use of an athlete's name, image, and likeness on school property, at school functions, or in any advertising material distributed or placed on school property;

(c) serve as an agent for the athlete to manage any contract using an athlete's name, image, and likeness; or

(d) do any combination of subsections (5)(a) through (5)(c).

(6) Nothing in this section prohibits a postsecondary institution from establishing or enforcing a conduct code that is applicable to all students enrolled at the unit.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 1, part 2, and the provisions of Title 20, chapter 1, part 2, apply to [section 1].

**Section 3. Effective date.** [This act] is effective June 1, 2023.

Approved April 30, 2021

## CHAPTER NO. 397

[SB 270]

AN ACT REVISING HAY PRICES ON STATE TRUST LAND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Setting hay prices for crop share.** The department shall set annual hay prices based on round bales for agricultural leases under the jurisdiction of the regional land offices.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 77, chapter 6, part 5, and the provisions of Title 77, chapter 6, part 5, apply to [section 1].

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

Approved April 29, 2021

## CHAPTER NO. 398

[SB 301]

AN ACT PROHIBITING POLITICAL SUBDIVISIONS FROM REQUIRING EMPLOYERS TO PROVIDE WAGES AND BENEFITS THAT ARE INCONSISTENT WITH STATE AND FEDERAL LAW; AMENDING SECTION 7-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that any mandate requiring an employer to provide a particular wage or employment benefit to an employee or class of employees in this state is a matter of statewide concern; and

WHEREAS, the enactment of any mandate by a political subdivision in this state requiring an employer to provide an employee or class of employees with a particular wage or employment benefit that is not required by state or federal law or the administration by a political subdivision of a state or federal mandated wage or employment benefit in a manner different than state and federal law would defeat statewide uniformity.

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

**Section 1. Short title.** [Sections 1 through 3] may be cited as the "Political Subdivision Employer Mandate Prohibition Act".

**Section 2. Definitions.** As used in [sections 2 and 3], the following definitions apply:

(1) "Employee" means a person in this state who is in the service of an employer or engaged in employment as defined in 39-2-101, or under any appointment or contract of hire, written or oral, express or implied.

(2) "Employer" means a person or entity in this state that has one or more employees.

(3) “Employment benefit” means anything of value or any type of compensation, other than wages, provided by an employer to an employee without regard to whether the employer places a monetary value on the benefit or whether the benefit is subject to taxation.

(4) “Political subdivision” means a local government unit, including but not limited to a county, city, or town established under authority of Article XI, section 1 or 6, of the Montana constitution.

**Section 3. Prohibitions – application.** (1) A political subdivision may not enact, administer, or otherwise require an employer to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law.

(2) [Sections 2 and 3] do not apply to a political subdivision affecting a wage or employment benefit for an employee or class of employees of that political subdivision.

**Section 4.** Section 7-1-111, MCA, is amended to read:

**“7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employee with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months’ imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee’s pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government’s ability to

require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12; or

(22) *any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law.*

**Section 5. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 7, chapter 1, and the provisions of Title 7, chapter 1, apply to [sections 1 through 3].

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

Approved April 29, 2021

**CHAPTER NO. 399**

[SB 350]

AN ACT GENERALLY REVISING ELECTION LAWS RELATED TO MINOR PARTIES; PROVIDING REQUIREMENTS FOR A MINOR PARTY TO QUALIFY THAT POLITICAL PARTY BY PETITION TO NOMINATE ITS CANDIDATES FOR OFFICE BY PRIMARY ELECTION; PROVIDING THAT ANY ELECTOR MAY SUBMIT A MINOR PARTY PETITION; PROVIDING DEADLINES FOR AN ELECTOR TO REMOVE THE ELECTOR'S NAME FROM A MINOR PARTY PETITION; PROVIDING PROCEDURES TO VERIFY ELECTORS' SIGNATURES ON A MINOR PARTY PETITION; REVISING PROCEDURES TO CERTIFY A MINOR PARTY PETITION; PROVIDING RETENTION REQUIREMENTS FOR DOCUMENTS ASSOCIATED WITH MINOR PARTY PETITIONS; PROVIDING THAT MONEY SPENT TO OPPOSE A MINOR PARTY'S PETITION TO QUALIFY TO HOLD A PRIMARY MUST BE DISCLOSED AND REPORTED IN THE SAME MANNER AS MONEY SPENT TO SUPPORT SUCH AN EFFORT; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 13-10-601, 13-10-605, 13-37-601, 13-37-603, 13-37-604, AND 13-37-605, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1. Submission and form of minor party petition.** (1) (a) Any elector may present a petition to the secretary of state to request that a political party that does not qualify to hold a primary election under 13-10-601(1) may qualify to nominate its candidates by primary election.

(b) The petition must be in the form prescribed by the secretary of state.

(2) 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. The number must include the registered voters in at least 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.

(3) Signed sheets or sections of petitions with original signatures and the affidavits of circulation as provided in [section 2] must be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than 4 weeks before the final date for filing the petition with the secretary of state as provided in [section 4(2)].

(4) (a) An elector may withdraw the elector's signature from a petition under [this part] until the final submission of petition sheets as provided in subsection (3).

(b) The county election administrator may consider an elector's request for an elector's name to be withdrawn only after verification that the elector requesting to be withdrawn from the petition is the same elector who signed the petition.

**Section 2. Verification of signatures.** An affidavit, in substantially the following form, must be attached to each sheet or section submitted to the county official:

I, (name of person who is the signature gatherer), swear that I/we gathered the signatures on the petition to which this affidavit is attached on the

stated dates, that I believe the signatures on the petition are genuine, are the signatures of the persons whose names they purport to be, and are the signatures of Montana electors who are registered at the address or have the telephone number following the person’s signature, and that I/we told the signers the contents of the petition before signing they signed the petition.

\_\_\_\_\_  
(Date on which the first signature was gathered)

\_\_\_\_\_  
(Signature of petition signature gatherer)

\_\_\_\_\_  
(Address of petition signature gatherer)

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_

Seal

\_\_\_\_\_  
(Person authorized to take oaths)

\_\_\_\_\_  
(Title or notarial information)

**Section 3. Verification of signatures by county – fraudulent or duplicate signatures.** (1) The county official shall check the names of all signers to verify they are registered electors. In addition, the official shall check all signatures on each sheet or section and compare them with the signatures of the electors as they appear in the records of the office. A signature may not be counted unless the elector has signed in substantially the same manner as it appears in the records of the office. If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature. The signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registration form as to provide reasonable certainty of its authenticity.

(2) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the signature gatherer, or both, to the county attorney to be investigated under the provisions of [section 7] and 13-35-207.

**Section 4. County official to forward verified sheets.** (1) The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable \_\_\_\_\_, Secretary of State of the state of Montana:  
I, \_\_\_\_\_, (title) of the County of \_\_\_\_\_, certify that I have examined the attached sheets of the petition to qualify the \_\_\_\_\_ political party to nominate its candidates by primary election in the manner prescribed by law; and I believe that \_\_\_ (number) signatures in (Legislative Representative District No. \_\_\_) (repeat for each district included in sheet or section) are valid; and I further certify that the affidavit of the signature gatherer of the petition is attached.

Signed: \_\_\_\_\_ (Date) \_\_\_\_\_ (Signature)

Seal \_\_\_\_\_ (Title)

(2) The county official verifying the number of registered electors signing the petition shall ensure that it is received by the secretary of state at least 95 days before the date of the primary.

**Section 5. Certification of minor party petition.** (1) When a petition containing a sufficient number of verified signatures has been filed and verified with the secretary of state as provided in this part, the secretary of state shall immediately certify that the completed petition qualifies the party to hold a primary election.

(2) If a filed petition does not meet the requirements of this part, the secretary of state shall certify that the political party does not qualify to nominate its candidates for public office by primary election.

(3) If a petition is filed under this part, the secretary of state shall certify the petition under subsection (1) or (2) at least 88 days before the date of the primary.

**Section 6. Retention of copies by county official.** The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of the official's office. The copies may be destroyed 3 months after the date the petition was certified unless a court action is pending on the sufficiency of the petition. If a court action is brought within 3 months after the date the petition is certified, the county official may destroy the files only after final disposition of the court action.

**Section 7. Violations – penalties.** A person who knowingly makes a false entry on a petition or affidavit under this part or who knowingly signs a petition to qualify the same political party for the same primary election more than once 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 8. Rulemaking.** The secretary of state shall adopt rules to implement the provisions of this part.

**Section 9.** 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) After certification of a petition by the secretary of state under [section 5(1)], 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 shall nominate its candidates for public office by primary election. However, this section may not be construed to prohibit an election administrator from not preparing a primary election ballot pursuant to 13-10-209.~~

~~(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. 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 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 85 days before the date of the primary.”~~

**Section 10.** Section 13-10-605, MCA, is amended to read:

**“13-10-605. Qualifying minor political parties – reports required.** (1) A person who spends or receives money ~~in furtherance of~~ *to support or oppose* an effort to qualify a minor political party for primary elections using

the petitions described in ~~13-10-601(2)~~ [section 1] shall comply with the provisions of Title 13, chapter 37, part 6.

(2) *For the purposes of this section, “support or oppose” has the meaning as provided in 13-37-601.”*

**Section 11.** Section 13-37-601, MCA, is amended to read:

**“13-37-601. Definitions.** For the purposes of this part, the following definitions apply:

(1) (a) “Contribution” means:

(i) the receipt by a reporting entity of an advance, gift, loan, conveyance, deposit, payment, or distribution of money ~~in furtherance of to support or oppose~~ an effort to qualify a minor party for primary elections using a minor party petition;

(ii) an expenditure that is made in coordination with a minor party qualification committee formed by the minor party that is reportable by the minor party qualification committee as a contribution;

(iii) the receipt of funds transferred from another reporting entity for use ~~in furtherance of to support or oppose~~ an effort to qualify a minor party for primary elections using a minor party petition; or

(iv) the payment by a person other than a reporting entity of compensation for the personal services of another person that are rendered to the reporting entity ~~in furtherance of to support or oppose~~ an effort to qualify a minor party for primary elections using a minor party petition.

(b) The term does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of the reporting entity.

(2) (a) “Expenditure” means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money made by a reporting entity ~~in furtherance of to support or oppose~~ an effort to qualify a minor party for primary elections using a minor party petition.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (1);

(ii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iii) the cost of any communication by a membership organization or corporation to its members or stockholders or employees.

(3) ~~“In furtherance of” means referring to or depicting a minor political party in a manner that is susceptible to no reasonable interpretation other than as a call for the political party to qualify to hold a primary election.~~

(4)(3) “Minor party” means a political party that does not qualify to hold a primary election under 13-10-601(1).

(5)(4) “Minor party petition” means a petition described by ~~13-10-601(2)~~ [section 1].

(6)(5) “Minor party qualification committee” means a combination of two or more individuals or a person other than an individual organized ~~in furtherance of to support or oppose~~ an effort to qualify a minor political party for primary elections using a minor party petition.

(7)(6) (a) “Reporting entity” means the following entities that receive at least \$500 in aggregate contributions in a calendar year or make at least \$500 in aggregate expenditures in a calendar year:

(i) except as provided by subsection (7)(b) (6)(b), an individual; or

(ii) a minor party qualification committee.

(b) The term does not mean an individual if the individual's contributions and expenditures are otherwise reportable by a minor party qualification committee. This exception includes but is not limited to an individual who is a signature gatherer if the signature gathering company, partnership, or other business organization that directly hires, supervises, and pays the individual is otherwise required to report as a minor party qualification committee under this part.

(7) *“Support or oppose” means referring to or depicting a minor party in a manner that is susceptible of no reasonable interpretation other than to advocate for or against a minor party’s qualification to hold a primary election.”*

**Section 12.** Section 13-37-603, MCA, is amended to read:

**“13-37-603. Reporting entity – reports required – exception.** (1) A reporting entity shall keep detailed records of all contributions received and expenditures made by or on behalf of the reporting entity. If the reporting entity is a minor party qualification committee, the treasurer appointed pursuant to 13-37-602 shall keep the records on behalf of the minor party qualification committee.

(2) A reporting entity may not knowingly report a contribution in the name of any person other than the person by whom it was actually furnished.

(3) A reporting entity shall file periodic reports containing the information required by 13-37-605 pursuant to the dates required by 13-37-604.

(4) Records kept pursuant to this section must be preserved by the reporting entity for 4 years from the date prescribed in ~~13-10-601(2)(c)~~ *[section 4(2)]* on which the signatures were presented or otherwise would have been presented to the election administrator.

(5) The commissioner may inspect records or accounts that must be kept pursuant to this part, as long as the inspection is made during reasonable office hours.

(6) If a reporting entity is otherwise required to file a report under Title 13, chapter 37, part 2, concerning the same matters required to be reported under this part, the reporting entity may not be required to file a duplicate report or duplicate information but shall file the information in one report.”

**Section 13.** Section 13-37-604, MCA, is amended to read:

**“13-37-604. Reporting dates.** (1) A reporting entity shall file reports quarterly, due on the 15th day of January, April, July, and October, beginning in the quarter in which the individual or minor party qualification committee becomes a reporting entity and ending when the reporting entity files a closing report as provided by subsection (4).

(2) The initial report must include contributions and expenditures prior to the time a person became a reporting entity until the 5th day before the date of filing of the initial report, even if the minor party petition subsequently fails to garner sufficient signatures to qualify the minor party for primary elections.

(3) (a) 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 the next report.

(b) Reports required under subsection (1) must be filed quarterly until the reporting entity files a closing report, even if no contributions have been received or no expenditures have been made during the reporting period.

(4) (a) A reporting entity shall file a closing report whenever all debts and obligations relating to the effort ~~in furtherance of qualifying to support or oppose the qualification of~~ a minor political party for primary elections are satisfied and further contributions or expenditures will not be received or made that relate to qualifying the minor political party for primary elections using the minor party petition.

(b) A closing report may be combined with the reporting entity's final quarterly report. However, the combined report must cover the period of time from the closing of the previous report until the date of filing of the combined quarterly and closing report.

(c) If the reporting entity does not file the closing report with the final quarterly report, the closing report must cover the period of the time from the closing of the last quarterly report until the date of the closing report.

(5) A reporting entity may file a combined opening and closing report if it otherwise comports with the requirements of this section."

**Section 14.** Section 13-37-605, MCA, is amended to read:

**"13-37-605. Content of reports.** (1) The periodic reports required by 13-37-603 must contain information concerning contributions received or expenditures made by or on behalf of the reporting entity. The reports must contain the following information:

(a) for contributions received:

(i) the amount of cash on hand at the beginning of the reporting period;

(ii) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions of \$35 or more;

(iii) for each person identified under subsection (1)(a)(ii), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;

(iv) the total sum of individual contributions made by the reporting entity and not reported under subsections (1)(a)(ii) and (1)(a)(iii);

(v) the name and address of each person from which the reporting entity received any transfer of funds for the purpose of *furthering supporting or opposing* an effort to qualify a minor party for primary elections using a minor party petition, together with the amount and dates of all transfers;

(vi) each loan of funds designated for use or used ~~in furtherance of to support or oppose~~ an effort to qualify a minor party for primary elections using a minor party petition from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(vii) the amount and nature of debts and obligations owed to a reporting entity relating to the reporting entity's effort to qualify a minor party for primary elections using a minor party petition, in the form prescribed by the commissioner;

(viii) an itemized account of proceeds that total less than \$35 from a person from mass collections made at fundraising events;

(ix) each contribution not otherwise listed under subsections (1)(a)(ii) through (1)(a)(viii) during the reporting period;

(x) the total sum of all contributions received by or for the reporting entity during the reporting period; and

(xi) other information that may be required by the commissioner to fully disclose the sources of funds used ~~in furtherance of to support or oppose~~ an effort to qualify a minor party for primary elections using a minor party petition;

(b) for expenditures made:

(i) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom expenditures have been made by the reporting entity during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(ii) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom an expenditure for personal services, salaries, and reimbursed expenses has been made, including the amount, date,

and purpose of that expenditure and the total amount of expenditures made to each person;

(iii) the total sum of expenditures made by the reporting entity during the reporting period;

(iv) the name and address of each person to which the reporting entity made any transfer of funds ~~in furtherance of~~ *to support or oppose* an effort to qualify a minor party for primary elections using a minor party petition, together with the amount and dates of all transfers;

(v) the name of any person to whom a loan was made during the reporting period using funds designated for the purpose of ~~furthering~~ *supporting or opposing* an effort to qualify a minor party for primary elections using a minor party petition, including the full name, mailing address, occupation, and principal place of business, if any, of that person and the full names, mailing addresses, occupations, and principal places of business, if any, of the endorsers, if any, and the date and amount of each loan;

(vi) the amount and nature of debts and obligations owed by the reporting entity relating to the reporting entity's effort to qualify a minor party for primary elections using a minor party petition in a form prescribed by the commissioner; and

(vii) other information that may be required by the commissioner to fully disclose the disposition of funds used ~~in furtherance of~~ *to support or oppose* an effort to qualify a minor party for primary elections using a minor party petition.

(2) Reports of expenditures made to a consultant or other person that performs services for or on behalf of a reporting entity 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) Reports required by 13-37-603 must be verified as true, complete, and correct by the oath or affirmation of the individual filing the report."

**Section 15. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 13, chapter 10, part 6, and the provisions of Title 13, chapter 10, part 6, apply to [sections 1 through 8].

**Section 16. Applicability.** [This act] applies to petitions described by [section 1] filed with the secretary of state on or after the [effective date of this act].

Approved April 30, 2021

## CHAPTER NO. 400

[SB 351]

AN ACT ALLOWING COUNTY ELECTION ADMINISTRATORS TO TEST VOTE TABULATION MACHINES BEFORE AUTOMATIC TABULATION BEGINS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 13-17-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, testing and certification of voting systems is required pursuant to section 13-17-212, MCA, including testing conducted by a county election administrator or designee; and

WHEREAS, election administrators in accordance with section 13-13-241(7), MCA, and under specific circumstances may begin automatic tabulation using a vote counting machine 1 day before election day for absentee ballots; and

WHEREAS, under administrative rules currently in place, an election administrator is unable to test all voting systems at least 1 day before election

day, resulting in counties being able to use fewer or none of their machines for early tabulation.

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

**Section 1.** 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. *An election administrator shall test all central count vote tabulation machines to be used if automatic tabulation begins pursuant to 13-13-241(7)(a) the day before the election. In accordance with subsection (3), the secretary of state shall adopt rules to meet the requirements of this subsection.*

(2) The secretary of state shall ensure that at least 10% of each type of voting system in the state has been randomly tested and certified at least once every calendar year.

(3) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211.”

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

Approved April 29, 2021

## CHAPTER NO. 401

[HB 632]

AN ACT IMPLEMENTING THE AMERICAN RESCUE PLAN ACT; PROVIDING APPROPRIATIONS AND ALLOCATIONS OF FEDERAL FUNDS AND OTHER FUNDS AVAILABLE BECAUSE OF THE RECEIPT OF FEDERAL FUNDS FOR THE FISCAL YEAR ENDING JUNE 30, 2021; ALLOWING APPROPRIATIONS TO CONTINUE INTO THE 2023 AND 2025 BIENNIUMS; PROVIDING CONDITIONS AND RESTRICTIONS ON THE USE OF FUNDS; CREATING ADVISORY COMMISSIONS RELATED TO INFRASTRUCTURE, COMMUNICATIONS, ECONOMIC TRANSFORMATION AND STABILIZATION AND WORKFORCE DEVELOPMENT, AND HEALTH; PROVIDING DEADLINES AND OTHER CONDITIONS RELATED TO THE GRANT PROCESS; REQUIRING THE USE OF MATCHING FUNDS FOR CERTAIN GRANTS; PROVIDING FOR A TECHNICAL ASSISTANCE TEAM TO ASSIST LOCAL GOVERNMENTS IN THE GRANT PROCESS; PROVIDING FOR FUNDING FOR STATE CAPITAL PROJECTS AND GRANTS FOR WATER AND SEWER INFRASTRUCTURE PROJECTS; PROVIDING MINIMUM ALLOCATION GRANTS TO LOCAL GOVERNMENTS FOR QUALIFYING PROJECTS; PROVIDING FOR A GRANT PROCESS FOR ECONOMIC TRANSFORMATION AND STABILIZATION PROJECTS AND WORKFORCE DEVELOPMENT; PROVIDING GRANTS TO REGIONAL WATER AUTHORITIES; REQUIRING PERFORMANCE MEASURES AND REPORTING ON PROJECTS; PROVIDING COORDINATION INSTRUCTIONS TO FUND QUALIFYING LONG-RANGE PROJECTS WITH FEDERAL FUNDS; PROVIDING THE EXECUTIVE THE AUTHORITY TO MODIFY AND REPORT MODIFICATIONS TO APPROPRIATIONS AND PARAMETERS OF PROGRAMS TO THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING FOR A REDUCTION

TO CERTAIN GRANT AWARDS TO LOCAL GOVERNMENTS BASED ON HEALTH REGULATIONS THAT ARE MORE STRICT THAN THOSE OF THE STATE; PROVIDING FOR ADMINISTRATION AND AUDIT COSTS; ESTABLISHING EDUCATIONAL MAINTENANCE OF EFFORT AND EQUITY PAYMENTS AND PARAMETERS FOR THEIR USE; PROHIBITING THE USE OF AMERICAN RESCUE PLAN ACT FUNDS FOR LOBBYING ACTIVITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 2-17-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Infrastructure advisory commission.** (1) There is an American Rescue Plan infrastructure advisory commission.

(2) The commission consists of nine members, who must be appointed as follows:

(a) three senators, two from the majority party and one from the minority party, appointed by the senate president;

(b) three representatives, two from the majority party and one from the minority party, appointed by the speaker of the house; and

(c) three members appointed by the governor.

(3) The commission shall review applications for funding for state capital projects and state and local government water and sewer infrastructure projects and shall provide recommendations to the executive on which projects should be funded. Projects approved by the 67th legislature for funding in House Bill No. 5, 6, 7, 11, or 14 are not submitted to the commission.

(4) Appointed members of the commission must be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at commission meetings or in the performance of any duty or service as a commission member.

(5) The department of natural resources and conservation shall serve as lead staff with the departments of administration and commerce assisting.

(6) Funding for the commission is allocated from the administrative costs allowed in [section 3].

(7) The commission shall hold its first meeting no later than June 11, 2021.

(8) The commission shall set its future meeting dates.

(9) The commission shall elect a chair from the legislative branch and a vice chair from the executive branch.

**Section 2. Appropriation for water and sewer infrastructure projects – matching funds.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the office of budget and program planning for state and local water and sewer infrastructure grants as follows:

Amount	ARPA Section
462,689,925	602

(2) For any water or sewer infrastructure grant awarded to a local government with these funds, a local government must provide matching funds.

(3) For the purposes of [this act], “local government” means any city, county, consolidated city-county, school district, or other political subdivision or local government body of the state, including an authority as defined in 75-6-304, water district, sewer district, irrigation district, water users association, conservation district, or tribal government.

(4) For the purposes of [this act], state water and sewer infrastructure projects includes projects for state-owned buildings and facilities and associated infrastructure, as well as within the Montana university system, including community colleges in the state.

(5) References to “ARPA Section” mean references to section 9901 of the American Rescue Plan Act of 2021, Public Law 117-2, which amends Title VI of the Social Security Act to include section 602.

(6) Funds appropriated under this section that are not otherwise allocated are allocated to the office of budget and program planning to provide grants pursuant to [section 3].

**Section 3. Competitive grant program.** (1) For the first round of grants, state and local governments shall submit grant requests and supporting materials, including the amount of matching funds available for water and sewer infrastructure projects, to the department of natural resources and conservation by July 15, 2021, in order to be eligible for funding under [section 2]. Applicants shall certify that each project submitted is a necessary investment in water or sewer infrastructure as defined in the American Rescue Plan Act and all applicable guidance. Subsequent submissions, if any, will be due by the dates established by the commission. The agency will review grant applications, rank projects, and issue a list of recommended projects to the advisory commission by August 15, 2021.

(2) The advisory commission shall review the lists of recommended water and sewer infrastructure projects and issue a list of recommended projects to the executive by the dates established by the commission.

(3) The department of natural resources and conservation shall certify that each project submitted is a necessary investment in water and sewer infrastructure as defined in the American Rescue Plan Act and all applicable guidance.

(4) The department of natural resources and conservation is authorized to present additional rounds of grant proposals to the commission as needed.

(5) For local government water and sewer infrastructure grants, preference may also be given to projects that provide a higher match rate.

(6) The advisory commission shall certify that each project submitted is a necessary investment in water and sewer infrastructure as defined in the American Rescue Plan Act and all applicable guidance.

(7) The recommendations of the advisory commission must be considered by the governor and reviewed to comply with the American Rescue Plan Act and all applicable guidance. The governor may modify recommendations and shall provide the list of approved projects to the advisory commission and to the legislative finance committee by the dates established by the governor. If the governor modifies the list of recommended projects submitted by the commission, the department of natural resources and conservation shall report and explain the changes to the advisory commissions and the legislative finance committee at its next scheduled meeting.

(8) If the governor later determines that a project cannot be completed, the governor may authorize a different project and provide a report to the advisory commission and the legislative finance committee. If the governor determines at any time that a project is identified not to be eligible based on the American Rescue Plan Act and all applicable guidance and, if completed, may result in a reduction in funds from the American Rescue Plan Act or require the state to repay or refund money to the federal government pursuant to the American Rescue Plan Act, the governor may authorize a different project and provide a report to the advisory commission and the legislative finance committee.

(9) No project may receive more than \$25 million in grant proceeds from this section.

(10) Up to 2.5% of the funds allocated in [section 2(6)] may be allocated for administrative costs.

**Section 4. Minimum allocation grants to local governments.**

(1) The amount of \$150 million of the coronavirus state fiscal recovery funds appropriated in [section 2] must be used to provide minimum allocation grants to local governments for water and sewer infrastructure projects eligible for funding under the American Rescue Plan Act.

(2) The amount a local government is eligible to receive in water and sewer infrastructure grants under this section is in the same proportion and using the same ratios provided for in 15-70-101(2)(b), (2)(c), and (3).

(3) (a) To receive a grant under this section, a local government shall submit an application for a qualifying water or sewer infrastructure project and pledge matching funds.

(b) A qualifying water or sewer infrastructure project is a project that complies with the uses authorized for the coronavirus state fiscal recovery funds.

(c) The local government shall pledge the lesser of:

(i) one-to-one matching funds; or

(ii) 25% of the amount that the local government received in coronavirus local fiscal recovery funds provided for in the American Rescue Plan Act.

(d) A local government may use coronavirus local fiscal recovery funds as matching funds.

(4) Grant funds not applied for and awarded or in a pending status by January 1, 2023, are transferred to the competitive grant program administered by the department of natural resources and conservation for distribution through the competitive grant program established in [section 3].

**Section 5. Grants to regional water authorities – matching funds – uses.** (1) Of the appropriation made in [section 2] of coronavirus state fiscal recovery funds, \$10 million is allocated to the department of natural resources and conservation to provide each regional water authority a grant of \$2.5 million.

(2) For a grant under this section, a regional water authority must provide one-to-one matching funds.

(3) The regional water authority may use grant funds and loans secured by bonds to serve as matching funds for federal grants.

**Section 6. Technical assistance team – grant application and engineering assistance.** (1) The department of commerce shall assemble a technical assistance team to notify local governments, with an emphasis on rural local governments, of the funding opportunities provided for in this bill related to water and sewer infrastructure projects.

(2) The technical assistance team shall also assist local governments in the application process and offer limited engineering assistance.

(3) The department may hire modified FTE or contract to create the technical assistance team.

(4) There is allocated \$750,000 from the funds appropriated in [section 2] for the technical assistance team.

**Section 7. Appropriation for capital projects.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the office of budget and program planning for state capital projects as follows:

Amount	ARPA Section
119,300,000	604

(2) For the purposes of [this act], “state capital projects” includes projects for state-owned buildings and facilities and associated infrastructure as well as within the Montana university system, including community colleges in the state. Project requests and supporting materials must be submitted to the department of administration in the manner prescribed by the department. Each applicant shall certify that each project submitted is a qualifying capital project as defined in the American Rescue Plan Act and all applicable guidance.

(3) The department of administration shall submit a list of recommended state capital projects to the advisory commission. If properly submitted and certified by the department of justice, the list must contain up to \$1 million for Freezer, Morgue and Refrigeration Space, and up to \$1 million for Crime Lab Facility Space at the department of justice, if eligible.

(4) The department of administration shall certify that each project submitted is a qualifying capital project as defined in the American Rescue Plan Act and all applicable guidance.

(5) The advisory commission shall review the lists of recommended capital projects and issue a list of recommended projects to the executive. The commission shall certify that each project submitted is a qualifying capital project as defined in the American Rescue Plan Act and all applicable guidance.

(6) The department of administration is authorized to present additional rounds of proposals to the commission as needed.

(7) In preparing recommendations for capital projects, preference must be given to projects that are geographically dispersed throughout the state. Projects must carry out critical capital projects directly enabling work, education, or health monitoring, including remote options, in response to the public health emergency with respect to COVID-19.

(8) The recommendations of the advisory commission must be considered by the governor and reviewed to comply with the American Rescue Plan Act and all applicable guidance. The governor may modify recommendations and shall provide the list of approved projects to the infrastructure advisory commission and the legislative finance committee. If the governor modifies the list of recommended projects submitted by the commission, the department of administration shall report and explain the changes to the infrastructure advisory commission and the legislative finance committee at its next scheduled meeting.

(9) If the governor later determines that a project cannot be completed, the governor may authorize a different project and provide a report to the infrastructure advisory commission and the legislative finance committee. If the governor determines at any time that a project is identified not to be eligible based on the American Rescue Plan Act guidance and, if completed, may result in a reduction in funds from the American Rescue Plan Act or require the state to repay or refund money to the federal government pursuant to the American Rescue Plan Act, the governor may authorize a different project and provide a report to the infrastructure advisory commission and the legislative finance committee.

(10) References to “ARPA Section” mean references to section 9901 of the American Rescue Plan Act of 2021, Public Law 117-2, which amends Title VI of the Social Security Act to include section 604.

(11) Up to 2% of the funds appropriated in this section may be allocated for administrative costs.

(12) Consent to construct as required by 18-2-102(1) is granted for projects funded with the appropriation provided in this section.

(13) If a project constructed with the funds appropriated in this section requires additional operations and maintenance budget authority as defined in

17-7-210, the requirements of 17-7-210 are considered to have been met if the funding for any additional operations and maintenance expenses are included in the executive budget in the next legislative session.

**Section 8. Communications advisory commission.** (1) There is an American Rescue Plan communications advisory commission.

(2) The commission consists of nine members, who must be appointed as follows:

(a) three senators, two from the majority party and one from the minority party, appointed by the senate president;

(b) three representatives, two from the majority party and one from the minority party, appointed by the speaker of the house; and

(c) three members, appointed by the governor.

(3) The commission shall review recommendations for funding communications projects and provide recommendations to the executive on which projects should be funded.

(4) Appointed members of the commission shall be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at commission meetings or in the performance of any duty or service as a commission member.

(5) The department of commerce shall staff the commission.

(6) Funding for the commission is allocated from the administrative costs allowed in [section 9].

(7) The commission shall hold its first meeting no later than June 11, 2021.

(8) The commission shall set its future meeting dates.

(9) The commission shall elect a chair from the legislative branch and a vice chair from the executive branch.

**Section 9. Appropriation for communications projects.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the office of budget and program planning and allocated to the department of commerce for the fiscal year beginning July 1, 2020, for communications projects. The appropriation is authorized to continue through the biennium beginning July 1, 2023.

Amount	ARPA Section
275,000,000	9901, 602

(2) Communication projects are those related to broadband infrastructure, including cell towers, or public safety, if eligible.

(3) For projects awarded with these funds, a local government or private entity must provide matching funds.

(4) References to "ARPA Section" mean references to section 9901 of the American Rescue Plan Act of 2021, Public Law 117-2, which amends Title VI of the Social Security Act to include section 602.

(5) Up to 3% of the funds appropriated in this section may be allocated for administrative costs.

**Section 10. Eligibility -- submission deadline -- preference -- approval of recommendations.** (1) The department of commerce shall certify that the projects listed in the recommendations are necessary investments in compliance with the American Rescue Plan Act and all applicable guidance.

(2) (a) The advisory commission shall review the lists of recommended projects and issue a list of recommended projects.

(b) The commission shall certify that the projects listed in the recommendations are necessary investments in compliance with the American Rescue Plan Act and all applicable guidance.

(3) In preparing recommendations, preference must be given to projects that provide broadband access to frontier, unserved, and underserved areas as

designated by the department of commerce. Preference may also be given to projects that provide a higher match rate.

(4) The recommendations of the advisory commission must be considered by the governor and reviewed to comply with the American Rescue Plan Act and all applicable guidance. The governor may modify recommendations and shall provide the list of approved projects to the communications advisory commission and the legislative finance committee. If the governor modifies the list of recommended projects submitted by the commission, the department of commerce shall report and explain the changes to the communications advisory commission and the legislative finance committee at its next scheduled meeting.

(5) If the governor later determines that a project cannot be completed, the governor may authorize a different project and provide a report to the communications advisory commission and the legislative finance committee. If at any time the governor determines that a project is identified not to be eligible based on the American Rescue Plan Act guidance and, if completed, may result in a reduction in funds from the American Rescue Plan Act or require the state to repay or refund money to the federal government pursuant to the American Rescue Plan Act, the governor may authorize a different project and provide a report to the communications advisory commission and the legislative finance committee.

**Section 11. Economic transformation and stabilization and workforce development advisory commission.** (1) There is an American Rescue Plan economic transformation and stabilization and workforce development advisory commission.

(2) The commission consists of nine members, who must be appointed as follows:

(a) three senators, two from the majority party and one from the minority party, appointed by the senate president;

(b) three representatives, two from the majority party and one from the minority party, appointed by the speaker of the house; and

(c) three members appointed by the governor.

(3) The commission shall review proposals for economic transformation and stabilization and workforce development programs from the department of commerce, department of agriculture, and department of labor and industry and provide a list of recommendations to the executive.

(4) The commission shall certify that each proposal submitted qualifies for funding pursuant to the American Rescue Plan Act and all applicable guidance.

(5) Appointed members of the commission must be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at commission meetings or in the performance of any duty or service as a commission member.

(6) Except for landlords receiving emergency rental assistance and entities receiving mortgage assistance payments, the economic transformation and stabilization and workforce development advisory commission shall require business and other organization applicants to disclose whether they received money administered by the state from the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) or the Coronavirus Response and Relief Supplemental Appropriations Act of 2020 (CRRSA) and, if so, the amount received and the basis and purpose of the award. In making its recommendations, the advisory commission shall take into account the fact that the applicant has already benefited from federal assistance provided in

response to COVID-19, but a previous CARES Act or CRRSA award does not preclude consideration of an application.

(7) The department of commerce shall staff the commission.

(8) Funding for the commission is allocated from the administrative costs allowed in [section 12].

(9) The commission shall hold its first meeting no later than June 11, 2021.

(10) The commission shall set its future meeting dates.

(11) The commission shall elect a chair from the legislative branch and a vice chair from the executive branch.

**Section 12. Appropriation for economic transformation and stabilization and workforce development.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the office of budget and program planning for the fiscal year beginning July 1, 2020, for economic transformation and stabilization grants and workforce development grants as follows. The appropriation is authorized to continue through the biennium beginning July 1, 2023.

Amount	ARPA Section
150,000,000	9901, 602

(2) \$10 million of the funds appropriated in this section must be used for rapid retraining jobs training.

(3) The appropriation in this section may be used for eligible business transformation and stabilization and workforce development programs, including but not limited to workforce training including rapid retraining, return-to-work bonuses, or short-term wage subsidies, business assistance for hiring or rehiring employees, business assistance for training or retraining employees, business technology grants, agricultural resiliency, and business transformation or stabilization grants.

(4) Up to 3% of the funds appropriated in this section may be allocated for administrative costs.

**Section 13. Eligibility—preference—approval of recommendations.**

(1) Applicable agencies shall recommend programs and funding amounts to the advisory commission for review and comment for funding under [section 12].

(2) Within the programs established by the applicable agencies, businesses or other organizations shall submit grant requests and supporting materials to the applicable state in order to be eligible for funding under [section 12]. Applicants shall certify that each grant request is eligible under the American Rescue Plan Act and all applicable guidance. The agency will review grant applications, rank grant applications, and issue a list of recommended grants to the advisory commission established in [section 11].

(3) The advisory commission shall review the lists of recommended grants and other proposed uses of the funds and issue a list of recommended grants and uses of funds to the executive.

(4) The applicable agency shall certify that each grant request is eligible under the American Rescue Plan Act and all applicable guidance.

(5) The applicable agency is authorized to present multiple rounds of grant proposals to the commission as needed.

(6) The advisory commission shall provide recommendations on the use of funds appropriated pursuant to [section 16]. The department of commerce shall report to the advisory commission on loans made in accordance with the federal requirements of the state small business credit initiative in [section 15].

(7) The recommendations of the advisory commission must be considered by the governor and reviewed to comply with the American Rescue Plan Act and

all applicable guidance. The governor may modify recommendations and shall provide the list of approved programs and business and other organization grantees to the legislative finance committee. If the governor modifies the list of recommended grants submitted by the commission, the applicable agency shall report and explain the changes to the advisory commission and to the legislative finance committee at its next scheduled meeting.

(8) If the governor later determines that a program or grant cannot be completed, the governor may authorize a different program or grant and provide a report to the advisory commission and the legislative finance committee. If at any time the governor determines that a program or grant is identified not to be eligible based on the American Rescue Plan Act guidance and, if completed, may result in a reduction in funds from the American Rescue Plan Act or require the state to repay or refund money to the federal government pursuant to the American Rescue Plan Act, the governor may authorize a different program or grant and provide a report to the advisory commission and the legislative finance committee.

**Section 14. Appropriations for housing and workforce training programs.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the office of budget and program planning and allocated to the department of commerce as follows for the fiscal year beginning July 1, 2020. Appropriation authority is intended to be allocated to the following items. Appropriations are authorized to continue through the biennium beginning July 1, 2023.

Amount	Purpose	ARPA Section
50,000,000	Mortgage Assistance	3206
11,459,768	HOME Program Supplemental Allocation	3205
152,400,000	Emergency Rental Assistance	3201

(2) For Emergency Rental Assistance, funds may be used to pay rent or rental arrears to any place where someone pays on a periodic basis for shelter, including but not limited to nursing homes, senior assisted living, group homes, low-income housing, workforce housing, transitional housing, and correctional facilities, if eligible. If the American Rescue Plan Act and all applicable guidance allows for other uses of emergency rental assistance funds, these funds may be used for those additional eligible purposes.

(3) The advisory commission established in [section 11] may provide recommendations to the department on the use of funds in this section.

(4) The department of commerce is encouraged to use existing programs, where feasible, to implement the programs provided for in this section.

**Section 15. State Small Business Credit Initiative.** There is appropriated to the department of commerce \$65 million in federal funds received pursuant to section 3301 of the American Rescue Plan Act of 2021, Public Law 117-2, for the State Small Business Credit Initiative. Funds are to be distributed in accordance with the American Rescue Plan Act and applicable guidelines. The appropriation is for the fiscal year beginning July 1, 2020, and is authorized to continue through the biennium beginning July 1, 2031.

**Section 16. Appropriations to department of labor and industry.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the department of labor and industry for the fiscal year beginning July 1, 2020, that are authorized to continue through the biennium beginning July 1, 2023. Appropriation authority is intended to be allocated to the following items.

Amount	Purpose	ARPA Section
5,500,000	Office of Community Service	2206
5,200,000	Unemployment Administration	9031, 9032

(2) References to “ARPA Section” mean references to sections of the American Rescue Plan Act of 2021, Public Law 117-2.

**Section 17. Appropriations to department of transportation – grants.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the department of transportation for the fiscal year beginning July 1, 2020, that are authorized to continue through the biennium beginning July 1, 2023. Appropriation authority is intended to be allocated to the following items.

Amount	Purpose	ARPA Section
600,000	Grants for State-Owned Airports	7102
2,777,812	Grants for Rural Transit	3401

(2) References to “ARPA Section” mean references to sections of the American Rescue Plan Act of 2021, Public Law 117-2.

**Section 18. Health advisory commission.** (1) There is an American Rescue Plan health advisory commission.

(2) (a) The commission consists of:

(i) three senators, two from the majority party and one from the minority party, appointed by the senate president;

(ii) four representatives, three from the majority party and one from the minority party, appointed by the speaker of the house; and

(iii) three members appointed by the governor.

(b) For legislative appointments, legislators serving as members of the joint appropriations subcommittee for health and human services from the 67th legislature are given preference.

(3) The commission shall recommend how funds allocated to the department of public health and human services are to be used.

(4) Appointed members of the commission must be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at commissions meetings or in the performance of any duty or service as a commission member.

(5) The department of public health and human services shall staff the commission.

(6) Funding for the commission is allocated from the administrative costs allowed in [section 20].

(7) The commission shall hold its first meeting no later than June 11, 2021.

(8) The commission shall set its future meeting dates.

(9) The commission shall elect a chair from the legislative branch and a vice chair from the executive branch.

**Section 19. Deadlines – meetings – recommendations – approval.**

(1) The commission shall meet on or before June 11, 2021, and shall report its recommended programs and amounts for which funds are appropriated in [section 20] to the director of the department of public health and human services. The commission shall certify that each program recommended is for an eligible use under the American Rescue Plan Act and all applicable guidance. The department shall also certify that each program recommended is for an eligible use under the American Rescue Plan Act and all applicable guidance.

(2) The department shall provide, as requested, to the commission and to the office of budget and program planning on implementation of programs funded in [section 20], including reporting on the expenditure of funds and measurable outcomes of the programs.

(3) The recommendations of the advisory commission must be considered by the governor and reviewed to comply with the American Rescue Plan Act

and all applicable guidance. The governor may modify recommendations and shall provide the list of approved programs and amounts to the health advisory commission and to the legislative finance committee. If the governor modifies the list of recommended programs and amounts submitted by the commission, the department of public health and human services shall report and explain the change to the advisory commission and to the legislative finance committee at its next scheduled meeting.

(4) If the governor later determines that a program cannot be completed, the governor, or the budget director under the direction of the governor, may authorize a different program and provide a report to the health advisory commission and the legislative finance committee. If at any time the governor determines that a program is identified not to be eligible based on the American Rescue Plan Act guidance and, if completed, may result in a reduction in funds from the American Rescue Plan Act or require the state to repay or refund money to the federal government pursuant to the American Rescue Plan Act, the governor, or the budget director under the direction of the governor, may authorize a different program and provide a report to the health advisory commission and the legislative finance committee.

**Section 20. Appropriations to department of public health and human services.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the department of public health and human services for the fiscal year beginning July 1, 2020, and continuing into the biennium beginning July 1, 2021. Appropriations are authorized to continue through the biennium beginning July 1, 2023. Appropriation authority is intended to be allocated to the following items. References to “ARPA Section” mean references to sections in the American Rescue Plan Act of 2021, Public Law 117-2.

Amount	Program	ARPA Section
11,000,000	SNAP	1101,1102
200,000	Commodity Supplemental Food Program	1104
900,000	Family Violence Prevention	2204
1,111,000	Child Abuse Prevention	2205
22,500,000	Vaccine Distribution and Supply	2301
143,400,000	Testing and Contact Tracing	2401
112,500,000	Child Care Block Grants	2201, 2202
1,700,000	State Veterans’ Homes	8004
23,000,000	Public Health Workforce	2501
10,500,000	SAMHSA/Mental Health and Substance Use Disorder Mental Health Block Grant	2701, 2702, 2703, 2705, 2706, 2707
31,775,000	LIHEAP/Water Assistance	2911, 2912
1,000,000	Supporting Older Americans and Families	2921
930,000	Emergency Food and Shelter Program	4007, 4008
2,726,000	Pandemic Emergency Assistance	9201
1,130,000	WIC	1105
1,223,000	IDEA Infants and toddlers	2014

(2) There are federal funds received pursuant to section 9901 of the American Rescue Plan Act of 2021, Public Law 117-2, which amends Title VI of the Social Security Act to include section 602, appropriated to the office of budget and program planning and allocated to the department of public health and human services, if eligible, as follows:

(a) up to \$15 million for nursing home and hospital-based swing bed payments; and

(b) up to \$2.75 million for a provider rate study.

(3) For SNAP, the appropriation is to be used for the 15% benefit extension, for administration, and for workforce training through existing programs in the department of labor and industry or through contracted private sector vendors.

(4) For SAMHSA, it is the intent of the legislature that the executive consider use of the SAMHSA funds above for the purposes of the HEART fund and for suicide prevention, including the use of the Utah model for suicide prevention that includes social media outreach, and for potential use in the department of corrections.

(5) For Child Care block grants provided for in section 2201 of the American Rescue Plan Act of 2021, Public Law 117, the department shall prioritize the use of funds o child care deserts for one-time equipment and necessary infrastructure, property improvements, worksite child care, licensing, and employee training and professional development.

(6) For nursing home and hospital-based swing bed payments, the department of public health and human services will allocate \$15 million to nursing home facilities and facilities with hospital-based swing beds by the later of May 31, 2021, or 15 days after the receipt of federal funds from the American Rescue Plan Act. The allocation will be made based on the number of medicaid patient days each facility had from January 1, 2020, through December 31, 2020. It is the intent of the legislature that no additional supplemental funds be allocated to nursing homes and facilities with hospital-based swing beds.

(7) For the provider rate study, the department of public health and human services will study the impact of COVID-19 on providers and make recommendations to adjust rates, if necessary, to reflect impacts to providers in an effort to maintain services.

**Section 21. Allocation to the judicial branch.** (1) There is appropriated \$944,721 in federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2 (602), to the office of budget and program planning and allocated to the judicial branch to support court operations impacted by the pandemic by streamlining the resolution of family law cases through early mediation and simplified proceedings in judicial districts with heavy caseloads or in remote areas of the state, if eligible.

(2) Prior to implementation, the judicial branch shall submit a program plan to the office of budget and program planning and the legislative finance committee, including effectiveness measures for the program and information and explanation demonstrating that the program qualifies for funds under the American Rescue Plan Act. The judicial branch shall also certify that the program is eligible under the American Rescue Plan Act and all applicable guidance.

(3) The judicial branch shall provide quarterly reports to the office of budget and program planning, the legislative finance committee, and, if House Bill No. 497 is passed and approved, to the judicial branch, law enforcement, and justice budget committee, on the implementation of the program, the expenditure of funds, and measurable outcomes of the program.

**Section 22. Appropriations to office of public instruction and office of budget and program planning.** (1) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the office of public instruction for the fiscal year beginning July 1, 2020. Appropriation authority is intended to be allocated to the following items. Appropriations are authorized to continue through the biennium beginning July 1, 2023. References to “ARPA Section” mean references to sections in the American Rescue Plan Act of 2021, Public Law 117-2.

Amount	Purpose	ARPA Section
343,817,312	Basic Allocation to School Districts	2001
3,400,000	Supplemental Allocation to School Districts	2001
120,000	Allocation to Other Educational Institutions	2001
555,234	Education Leadership in Montana	2001
5,475,248	OPI Database Modernization	2001
1,910,096	Administration	2001
19,100,962	State Learning Loss	2001
3,820,192	State Summer Enrichment	2001
3,820,192	State Afterschool Programs	2001
9,241,420	Individuals with Disabilities Education Act	2014

(2) The appropriations to the office of public instruction in subsection (1) are restricted as follows:

(a) For Basic Allocation to School Districts, the amount allocated by the office of public instruction to school districts must be as required by federal law. The office of public instruction shall distribute funds via grants for expenses that are consistent with section 2001(e) of ESSER III.

(b) For Supplemental Allocation to School Districts, the office of public instruction shall allocate the funds as follows:

(i) a school district with fewer than 6 quality educators receives \$10,000;

(ii) a school district with 6 or more quality educators that receives less than an amount equal to \$10,000 times the number of the district's quality educators in the basic allocation receives an amount for every quality educator plus an additional \$50 for every quality educator that the district is below the statewide average of quality educators for each district;

(iii) the amount for every quality educator must be calculated to use the \$3.4 million appropriation; and

(iv) the office of public instruction shall distribute the funds in the same manner as used for the basic allocation.

(c) For Allocation to Other Educational Institutions, an allocation to the school for the deaf and blind, Pine Hills youth correctional facility, and the youth academy must be made on a per-quality-educator basis. The office of public instruction shall distribute the funds in the same manner as used for the basic allocation.

(d) For Education Leadership in Montana, the office of public instruction shall create a system to build the capacity of principals, teachers, and other leaders to ensure recovery of each school from the effects of the covid-19 pandemic in a model that addresses the learning opportunities missed and needed by each person to reach their full educational potential.

(e) For OPI Database Modernization, funds must be used by the office of public instruction to repair, improve, or replace existing data systems to respond to learning loss associated with the pandemic. Actions taken must be consistent with 20-7-104.

(f) For Administration, funds must be used by the office of public instruction for administration of ESSER III activities.

(g) For State Learning Loss, State Summer Enrichment, and State Afterschool Programs, funds may be used at the discretion of the office of public instruction for purposes allowed by federal law and may include grants to school districts. A school district may use these funds to provide allowable support to a special education cooperative of which it is a member. Any funds granted to school districts must be distributed in the same manner as used for the basic allocation.

(3) There is appropriated \$\$12.1 million to the office of budget and program planning for assistance to nonpublic schools from the funds received pursuant to section 2002 of the American Rescue Plan Act, Public Law 117-2.

(4) The office of public instruction shall provide quarterly status reports on the implementation of programs, the expenditure of funds, and measurable outcomes of the program to the office of budget and program planning, to the legislative finance committee, and if House Bill No. 497 is passed and approved, to the education budget committee.

**Section 23. Appropriations to state library, and Montana arts council.** (1) There are federal funds received pursuant to section 2021 of the American Rescue Plan Act of 2021, Public Law 117-2, in the amount of \$764,000 appropriated to the Montana arts council for the fiscal year beginning July 1, 2020. Appropriations are authorized to continue through the biennium beginning July 1, 2023.

(2) There are federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, appropriated to the state library for the fiscal year beginning July 1, 2020. Appropriation authority is intended to be allocated to the following items. Appropriations are authorized to continue through the biennium beginning July 1, 2023.

1,235,444	Hot Spot Lending Program and broadband infrastructure in libraries	2023
1,000,000	E-Learning Digital Content	2023

(3) There is allocated \$120,000 to the state library for newswire from the funds appropriated in [section 20] for Supporting Older Americans and Families, if eligible.

(4) Applicable agencies in this section shall provide quarterly status reports on the implementation of programs, the expenditure of funds, and measurable outcomes of the program to the office of budget and program planning, to the legislative finance committee, and if House Bill No. 497 is passed and approved, to the education budget committee.

**Section 24. Appropriation – coronavirus local fiscal recovery fund.** There is appropriated to the office of budget and program planning \$81.8 million to distribute pursuant to section 9901 of the American Rescue Plan Act of 2021, Public Law, 117-2, which amends Title VI of the Social Security Act to include section 603.

**Section 25. Audit appropriations.** (1) Of the federal funds appropriated to the office of budget and program planning in [sections 9 and 14] and appropriated to the department of commerce in [section 15], the amount of \$32,800 is reserved for the legislative audit division as a restricted and biennial appropriation for the 2023 biennium.

(2) Of the federal funds appropriated to the office of budget and program planning in [sections 2, 7, 12, 22, 24, and 27], the amount of \$34,850 is reserved for the legislative audit division as a restricted and biennial appropriation for the 2023 biennium as follows:

- (a) American Rescue Plan Act testing, \$24,600; and
- (b) single audit administration and reporting, \$10,250.

(3) Of the federal funds appropriated to the office of public instruction in [section 22], the amount of \$20,500 is reserved for the legislative audit division as a restricted and biennial appropriation for the 2023 biennium.

(4) Of the federal funds appropriated to the department of public health and human services in [section 20], the amount of \$12,300 is reserved for the legislative audit division as a restricted and biennial appropriation for the 2023 biennium.

(5) The legislative audit division will include estimated audit costs associated with [this act] in the estimated audit costs provided for in 5-13-402 for the 2025 biennium.

(6) As provided for in 17-7-141, agencies appropriated funds through [this act] will reserve enough money from these federal funds to pay associated audit costs in the 2025 biennium.

**Section 26. Modifications to appropriations and authorizations -- report of modifications or changes.** (1) The governor, or the budget director under the direction of the governor, is authorized to redirect appropriations to other projects or appropriations or modify provisions within [this act] to ensure conformity with the American Rescue Plan Act and applicable guidance.

(2) (a) If a proposed line-item transfer or a fund switch in [this act] exceeds \$100,000, the budget director shall submit an explanation and detailed description of the requested line-item transfer or fund switch to the legislative fiscal analyst 30 days prior to the next scheduled meeting of the legislative finance committee.

(b) For the purposes of this section, the following definitions apply:

(i) "Line-item transfer" means the transfer of appropriation authority from one line-item appropriation to a different line-item appropriation within the same section of [this act] or between any appropriations made in [sections 14 through 25] of [this act].

(ii) "Fund switch" means a change in a line-item fund source or account to another fund source or account.

(3) As federal guidance becomes available related to the use of "reduction in revenue" funds pursuant to section 9901 of the American Rescue Plan Act of 2021, Public Law 117-2, amending Title VI of the Social Security Act to include section 602(c)(1)(C), otherwise known as "revenue replacement funds", the office of budget and program planning may calculate the amount of funds available pursuant to that section 602 and recommend to the governor and the legislative finance committee an amount to be allocated among the appropriations of 602 funds in [this act].

(4) The legislative finance committee shall review the proposed line-item transfer or fund switch or the recommendation on the use of revenue replacement funds as provided in subsection (3), at the next meeting. A representative of the office of budget and program planning shall be present at the meeting to discuss the proposal or recommendation. The legislative finance committee may take up to 15 days following its meeting to review and provide written comment on the proposal or recommendation. The office of budget and program planning may provide a response to the comments within 15 days of receiving the committee's comments.

(5) The governor, or the budget director at the direction of the governor, is authorized to adjust the parameters of a program or service appropriated in [this act] to ensure conformity with applicable federal laws, regulations, and guidance issued by federal agencies. If the parameters of a program are adjusted, the office of budget and program planning shall notify the legislative finance committee of the change at its next scheduled meeting. The legislative finance committee may take up to 15 days following its meeting to review and provide written comment on the proposal. The office of budget and program planning may provide a response to the comments within 15 days of receiving the committee's comments.

(6) If a proposed line-item transfer or a fund switch or a modification to the parameters of a program or service is of an urgent nature, the budget director shall notify the legislative fiscal analyst as soon as possible and the 30-day notice is not required. The legislative finance committee shall convene

as soon as possible to review the proposal and provide comment. The meeting may be held in a virtual setting.

(7) If additional funds are received by the state from the federal government above the levels appropriated in [this act], House Bill No. 3, or House Bill No. 630, the approving authority as defined in 17-7-102 may authorize a budget amendment as defined in Title 17, chapter 7, part 4, and the requirements of 17-7-402(1)(e) do not apply. If a federal appropriation is not included in [this act], House Bill No. 3, or House Bill No. 630, for a specific grant authorized by the federal government or in an amount sufficient to appropriate the entire amount received from a federal agency to deploy funds authorized by the federal government, the requirements of 17-7-402(1)(e) do not apply.

(8) Except as provided in subsection (6), the governor may not take any of the following actions until 15 days after the legislative finance committee has met to address a:

- (a) line-item transfer or fund switch in excess of \$100,000; or
- (b) recommendation for the use of revenue replacement funds.

**Section 27. Performance measures – dissemination of information.**

(1) Agencies administering programs funded by the American Rescue Plan Act shall develop plans to measure the effectiveness of the programs.

(2) Agencies administering programs funded by the American Rescue Plan Act shall require grant applicants to state what they intend to accomplish if selected to receive funding. To the extent that the agencies are able to determine generally applicable outcomes to determine the effectiveness of proposals submitted by applicants, agencies shall require applicants to state how they will achieve those outcomes. Agencies may also require applicants to state the outcomes that should be used to determine the effectiveness of their proposals and how they will achieve those outcomes. Individual applicants who are not sole proprietorships, such as individuals who participate in training programs or are recipients of benefits administered by the department of public health and human services or the department of labor and industry, and business applicants that are landlords only participating in one or both of the Emergency Rental Assistance Program and the Mortgage Assistance Program or entities receiving mortgage payments, are exempt from the requirements in this subsection.

(3) Agencies administering programs funded by the American Rescue Plan Act shall require periodic reports from the applicants identified in the prior section to provide information necessary for the state to comply with its federal and other compliance obligations, as well as any additional information necessary for the agencies to confirm that applicants completed their proposals and achieved the intended outcomes. Where feasible, quantitative data should be required.

(4) The office of budget and program planning shall promote the funding opportunities afforded in [this act] and offer an online portal that directs prospective grantees to the various grant programs available pursuant to [this act]. The online portal must also provide data and information on the website to provide transparency in how funds were spent and identify grant recipients for businesses, local or tribal governments, or nonprofit organizations.

(5) The office of budget and program planning shall provide quarterly reports to the legislative finance committee throughout the interim on the implementation of [this act].

(6) (a) The office of budget and program planning is appropriated \$3.7 million to provide oversight, public interaction, reporting, transparency, and other services from funds received pursuant to the American Rescue Plan Act

of 2021, Public Law 117-2, which amends Title VI of the Social Security Act to include section 602.

(b) \$200,000 of the amount appropriated in this subsection (6) is allocated to the legislative services division for coordinating remote and hybrid meetings in the state capitol for state government in response to the increased demand for virtual meetings resulting from the COVID-19 pandemic.

**Section 28. Reduction in funding – health regulations.** If a local government is awarded grant funds appropriated in [section 2], the amount of the grant is reduced by 20% if that local government or any of its authorized agents have health regulations related to COVID-19 that are more strict than those imposed by the state in effect at the time the grant is awarded.

**Section 29.** Section 2-17-603, MCA, is amended to read:

**“2-17-603. Government competition with private internet services providers prohibited – exceptions.** (1) Except as provided in subsection (2)(a) or (2)(b), an agency or political subdivision of the state may not directly or through another agency or political subdivision be an internet services provider.

(2) (a) An agency or political subdivision may act as an internet services provider if:

(i) no private internet services provider is available within the jurisdiction served by the agency or political subdivision; or

(ii) the agency or political subdivision provided services prior to July 1, 2001.

(b) An agency or political subdivision may act as an internet services provider when providing advanced services that are not otherwise available from a private internet services provider within the jurisdiction served by the agency or political subdivision.

(c) If a private internet services provider elects to provide internet services in a jurisdiction where an agency or political subdivision is providing internet services, the private internet services provider shall inform the agency or the political subdivision in writing at least 30 days in advance of offering internet services.

(3) Upon receiving notice pursuant to subsection (2)(c), the agency or political subdivision shall notify its subscribers within 30 days of the intent of the private internet services provider to begin providing internet services and may choose to discontinue providing internet services within 180 days of the notice.

(4) Nothing in this section may be construed to prohibit an agency or political subdivision from:

(a) offering electronic government services to the general public; **or**

(b) acquiring access to the internet from a private internet services provider in order to offer electronic government services to the general public; **or**

*(c) providing funding for broadband service infrastructure projects consistent with the provisions of [this act].”*

**Section 30. Maintenance of effort and equity for educational programs under the American Rescue Plan Act of 2021.** (1) (a) For fiscal years 2022 and 2023, if the budget director determines that the state will not be in compliance with maintenance of effort requirements for higher education under section 317 of the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 or section 2004 of the American Rescue Plan Act of 2021, then the budget director shall:

(i) if the noncompliance is for fiscal year 2022:

(A) request that the approving authority transfer appropriation authority for the “appropriation distribution” line in section E of House Bill No. 2 from fiscal year 2023 to fiscal year 2022 in an amount sufficient to address the maintenance of effort requirements; and

(B) request a supplemental appropriation from the 2023 legislature to replace the transferred fiscal year 2023 authority; and

(ii) if the noncompliance is for fiscal year 2023, request a supplemental appropriation from the 2023 legislature sufficient to address the maintenance of effort requirements.

(b) Increased appropriations pursuant to subsection (1)(a) must be distributed to units of the Montana university system at the discretion of the board of regents of higher education.

(2) (a) For fiscal years 2022 and 2023, if the budget director determines that the state will not be in compliance with either maintenance of effort or maintenance of equity requirements or both for elementary and secondary education under section 317 of the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 or section 2004 of the American Rescue Plan Act of 2021, then the budget director shall direct the superintendent of public instruction to provide either a maintenance of effort or maintenance of equity payment or both to school districts in a manner and amount that minimizes the total amount of additional funding provided by the state under this subsection (2).

(b) If in fiscal year 2022, the budget director determines that the state will not be in compliance with either maintenance of effort or maintenance of equity as provided in subsection (2)(a), the superintendent of the office of public instruction may move funds from program 09 “local activities” appropriations for the fiscal year beginning July 1, 2022, for distribution as provided for in subsection (2)(c).

(c) The superintendent of public instruction shall distribute the following payments from program 09 “local education activities” appropriations to the office of superintendent of public instruction in section E of House Bill No. 2 as directed by the budget director:

(i) a maintenance of equity payment to specific school districts only as necessary and in the minimum amount required to ensure compliance; and

(ii) a maintenance of effort payment to each school district based on the ratio that the sum of the district’s BASE budget and any maintenance of equity payment made to the district bears to the sum of statewide BASE budget amount and the statewide total of any maintenance of equity payments made to school districts.

(d) A school district receiving a payment under this subsection (2) shall deposit the money in the district’s miscellaneous programs fund and may use the money for general operations and instruction as determined by the board of trustees.

(e) The budget director shall request a supplemental appropriation from the 2023 legislature to replace or augment authority as necessary for the purposes of this section.

(3) The superintendent shall report to the legislative finance committee on:

(a) any calculations, determinations, authority transfers, and payments made pursuant to this section;

(b) the status of any waivers sought by the state to the maintenance of effort or maintenance of equity requirements under section 317 of the

Coronavirus Response and Relief Supplemental Appropriations Act of 2021 or section 2004 of the American Rescue Plan Act of 2021; and

(c) the need for supplemental appropriations due to payments made under this section.

**Section 31. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 32. Notification of reduction or repayment of federal funds – action for declaratory judgment.** If the budget director receives written notification from the federal government that a provision in [this act] may result in a reduction in federal funds or require the state to pay or refund money to the federal government pursuant to the American Rescue Plan Act of 2021, the governor's office shall file an action for declaratory judgment to determine the validity of the provision.

**Section 33. Restrictions on use of funds for lobbying activities.** The governing body of a state, county, or municipality may not spend funds received in [this act] to influence or attempt to influence the outcome of any legislation pending before the legislature.

**Section 34. Long-range projects funding.** (1) If any of the allocations for projects outlined in [sections 35 through 38] are determined to be ineligible for funding through the American Rescue Plan Act, funding for each ineligible project is appropriated for the project from the source of funding designated in the introduced version of the respective long-range bill.

(2) If any portion of the allocations for projects outlined in [section 37 39] are determined to be ineligible for funding through the American Rescue Plan Act, a like portion of funding for those projects shall be:

(a) appropriated from the capital developments long-range building program account provided for in 17-7-209 for projects funded through [section 1] of House Bill No. 14;

(b) appropriated from the treasure state endowment special revenue account provided for in 17-5-703(3)(a) funded through [section 5] of House Bill No. 14; and

(c) appropriated from the natural resources projects state special revenue account provided for in 15-38-302 funded through [section 9] of House Bill No. 14.

**Section 35. Coordination instruction – House Bill No. 5.** (1) If both House Bill No. 5 and [this act] are passed and approved, then the appropriations for the OPI MT Learning Center Civil Infrastructure Upgrades and the UM FLBS Sewer Treatment Plant in [section 2(1)] of House Bill No. 5 are void and there is allocated to the department of administration \$2,050,000 for those projects from the funds appropriated in [section 2].

(2) If both House Bill No. 5 and [this act] are passed and approved, then the appropriations for the following projects in [section 2(1)] of House Bill No. 5 are void and there is allocated to the department of administration \$6,710,000 for the following projects from the funds appropriated in [section 7]:

- (a) MSU Haynes Hall Lab Ventilation Upgrades;
- (b) MSU BLGS Art Annex Safety and System Upgrades;
- (c) UM-HC Donaldson Building HVAC Upgrades;
- (d) MSU-N Auto Tech Building System Improvements;
- (e) MSDB Card Lock System;
- (f) MSU-N Brockmann Center HVAC and Energy Project; and
- (g) COVID-19 remote and office workspace study and planning.

**Section 36. Coordination instruction – House Bill No. 6.** (1) If both House Bill No. 6 and [this act] are passed and approved, then [the introductory paragraph of section 1(1)] of House Bill No. 6 must read:

“(1) For the biennium beginning July 1, 2021, there is allocated to the department of natural resources and conservation ~~from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602), from funds appropriated in [section 2] of House Bill No. 632, up to:~~”.

(2) If both House Bill No. 6 and [this act] are passed and approved, then [section 1(2)] of House Bill No. 6 must read:

“(2) The amount of \$4,500,000 is ~~appropriated to the office of budget and program planning and~~ allocated to the department of natural resources and conservation from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602); ~~the funds appropriated in [section 2] of House Bill No. 632,~~ for the biennium beginning July 1, 2021. The funds referred to in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts listed in subsection (4), subject to the conditions set forth in [sections 2 and 3] and the contingencies described in the renewable resource grant and loan program January 2021 report to the 67th legislature titled: “Governor’s Executive Budget Fiscal Years 2021-2023 Volume 6”.”

**Section 37. Coordination instruction – House Bill No. 7.** If both House Bill No. 7 and [this act] are passed and approved, then [section 1(2)] of House Bill No. 7 must read:

“(2) The amount of \$3,273,833 is ~~appropriated to the office of budget and program planning and~~ allocated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 and the amount of \$429,000 is ~~appropriated to the office of budget and program planning and~~ allocated to the department of natural resources and conservation from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602); ~~the funds appropriated in [section 2] of House Bill No. 632~~ for grants to political subdivisions and local governments during the biennium beginning July 1, 2021. The funds in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts set out in subsection (4) subject to the conditions set forth in [sections 2 and 3] and the contingencies described in the reclamation and development grants program report to the 67th legislature titled: “Governor’s Executive Budget Fiscal Years 2021-2023 Volume 5”.

**Section 38. Coordination instruction – House Bill No. 11.** (1) If both House Bill No. 11 and [this act] are passed and approved, then [section 1(1)] of House Bill No. 11 must read:

“(1) There is ~~appropriated to the office of budget and program planning and~~ allocated to the department of commerce \$9,869,800 for the biennium beginning July 1, 2021, from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602); ~~the funds appropriated in [section 2] of House Bill No. 632~~ to finance treasure state endowment program grants authorized by subsection (2).”

(2) If both House Bill No. 11 and [this act] are passed and approved, then [section 5] of House Bill No. 11 must read:

~~“There is appropriated allocated \$100,000 from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602); to the office of budget and program planning and allocated from the funds appropriated in [section 2] of House Bill No. 632 to the department of commerce for the biennium beginning July 1, 2021, for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.”~~

(3) If both House Bill No. 11 and [this act] are passed and approved, then [section 6] of House Bill No. 11 must read:

~~“There is appropriated allocated \$900,000 from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602); to the office of budget and program planning and allocated from the funds appropriated in [section 2] of House Bill No. 632 to the department of commerce for the biennium beginning July 1, 2021, for the purpose of providing local governments, as defined in 90-6-701, with the infrastructure planning grants for infrastructure projects, as defined in 90-6-701.”~~

(4) If both House Bill No. 11 and [this act] are passed and approved, then [section 7(1)] of House Bill No. 11 must read:

~~“There is appropriated allocated \$5,000,000 from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602); to the office of budget and program planning and allocated from the funds appropriated in [section 2] of House Bill No. 632 to the department of natural resources and conservation for the biennium beginning July 1, 2021, to finance the state’s share of regional water system projects authorized in subsection (2) and as set forth in 90-6-715.”~~

**Section 39. Coordination instruction – House Bill No. 14.** (1) If both House Bill No. 14 and [this act] are passed and approved, then there is appropriated from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602), to the office of budget and program planning and allocated from the funds appropriated in [section 7] to the department of administration:

- (a) ~~\$26,200,000 for the MT Veterinarian Diagnostic & Ag Analytical Labs;~~
- ~~(b)~~(a) \$6,500,000 for Liquor Warehouse Expansion; and
- ~~(c)~~(b) \$4,800,000 for the UM-W Block Hall Renovation.

(2) (a) If both House Bill No. 14 and [this act] are passed and approved, then there is allocated \$26,200,000 from the funds appropriated in [section 20] to the department of administration for the MT Veterinarian Diagnostic & Ag Analytical Labs.

(b) If it determined that the project identified in (2)(a) is ineligible for funding from the appropriations in [section 20], the allocation in (2)(a) is void and there is allocated \$26,200,000 from the funds appropriated in [section 7] to the department of administration for the MT Veterinarian Diagnostic & Ag Analytical Labs.

(2)(3) If both House Bill No. 14 and [this act] are passed and approved, then [section 5(1)] of House Bill No. 14 must read:

~~“(1) There is appropriated to the office of budget and program planning and allocated to the department of commerce \$13,707,898 for the biennium beginning July 1, 2021, from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602); from the funds appropriated in~~

[section 2] of House Bill No. 632 to finance treasure state endowment program grants authorized by subsection (2).”

(3)(4) If both House Bill No. 14 and [this act] are passed and approved, then [section 9(1)] of House Bill No. 14 must read:

“(1) There is ~~appropriated from federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2, section 9901 (amending Title VI of the Social Security Act to include section 602), to the office of budget and program planning and allocated to the department of natural resources and conservation~~ *from the funds appropriated in [section 2] of House Bill No. 632* up to \$4,720,788 for grants to political subdivisions and local governments for the biennium beginning July 1, 2021. The funds referred to in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts listed in subsection (3), subject to the conditions set forth in [sections 11 and 12] and the contingencies described in the renewable resource grant and loan program January 2021 report to the 67th legislature titled: “Governor’s Executive Budget Fiscal Years 2021-2023 Volume 6”.”

**Section 40. Coordination instruction.** If both Senate Bill No. 297 and [this act] are passed and approved:

(1) [Section 2(11) of Senate Bill No. 297] must read as follows:

“(11) “Underserved area” means an area where at least 10% of the delivery points have no access to broadband service offered with a download speed range of at least 100 megabits per second and an upload speed of at least 20 megabits per second or less with low latency.”

(2) [Section 7 of Senate Bill No. 297] must be amended to include subsection (5)(n) which reads:

“(n) broadband service providers who have broadband service infrastructure already deployed in the project area.”

**Section 41. Coordination instruction – Senate Bill No. 297.** If both Senate Bill No. 297 and [this act] are passed and approved, the appropriation in [section 9] shall be used for the purposes set forth in Senate Bill No. 297.

**Section 42. Coordination instruction.** If House Bill No. 630 and [this act] are passed and approved, then [section 1 of House Bill No. 630], regarding a maintenance of equity payment, is void.

**Section 43. Rulemaking authority.** Applicable agencies may adopt rules to implement the grant programs funded in [this act].

**Section 44. 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 45. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 2021

## CHAPTER NO. 402

[HB 325]

AN ACT ESTABLISHING SUPREME COURT DISTRICTS; PROVIDING FOR THE SELECTION OF THE CHIEF JUSTICE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORATE AT THE 2022 GENERAL ELECTION; AMENDING SECTION 3-2-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 3-2-101, MCA, is amended to read:

**“3-2-101. Number, election, and term of office – selection of chief justice.** (1) The supreme court consists of a chief justice and six associate justices who are elected *in separate districts* by the qualified electors of the ~~state at large districts provided in [section 2]. Each justice must be elected at the general state elections~~ election next preceding the expiration of the ~~terms~~ term of office of ~~their predecessors, respectively; the justice’s predecessor~~ and ~~hold their offices~~ holds office for the term of 8 years from ~~and after~~ the first Monday of January next succeeding ~~their~~ the justice’s election.

(2) *After the general election in 2024, the chief justice must be selected by the majority vote of the seven justices at the first meeting of the court in each year after a general election.”*

**Section 2. Supreme court districts defined – number of judges.**

(1) In this state there are seven supreme court judicial districts, distributed as follows:

(a) First district: Blaine, Cascade, Chouteau, Fergus, Hill, Judith Basin, Liberty, Pondera, Teton, and Toole Counties;

(b) Second district: Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, McCone, Meagher, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, Wheatland, and Wibaux Counties;

(c) Third district: Yellowstone County;

(d) Fourth district: Beaverhead, Broadwater, Deer Lodge, Granite, Jefferson, Lewis and Clark, Powell, and Ravalli Counties;

(e) Fifth district: Flathead, Glacier, Lincoln, and Sanders Counties;

(f) Sixth district: Gallatin, Madison, and Silver Bow Counties; and

(g) Seventh district: Mineral, Missoula, and Lake Counties.

(2) There must be one supreme court justice selected for each district.

(3) The legislature shall review the districts after each decennial census for purposes of maintaining districts with approximately equal populations while following county lines.

**Section 3. Transition.** (1) [This act] may not remove any justice that is holding office on [the effective date of this act] during the term for which the justice was elected or appointed. After [the effective date of this act], each sitting associate justice must be assigned to the judicial district that corresponds to the associate justice’s current seat number and the chief justice must be assigned to the seventh district.

(2) (a) Except as provided in subsection (2)(b), each supreme court justice who chooses to seek reelection at the end of the justice’s current term shall run for reelection in the district to which the justice is assigned under subsection (1).

(b) A sitting justice that chooses to seek election in a district other than the district assigned under subsection (1) may run for election in the district if the justice resigns the justice’s current seat effective as of the date the justice files for election in the district to which the justice seeks election.

**Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 3, chapter 2, part 1, and the provisions of Title 3, chapter 2, part 1, apply to [section 2].

**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.** [This act] is effective upon approval by the electorate.

**Section 7. Applicability.** [This act] applies to the election and appointment of supreme court justices to terms that begin on or after [the effective date of this act].

**Section 8. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2022 by printing on the ballot the full title of [this act] and the following:

- YES on Legislative Referendum \_\_\_\_.
- NO on Legislative Referendum \_\_\_\_.

Approved May 6, 2021

## CHAPTER NO. 403

[HB 7]

AN ACT IMPLEMENTING THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriations for reclamation and development grants.** (1) There is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to \$800,000 for grants for planning reclamation and development projects to be awarded by the department over the course of the biennium.

(2) The amount of \$3,702,833 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 for grants to political subdivisions and local governments during the biennium beginning July 1, 2021. The funds in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts set out in subsection (4) subject to the conditions set forth in [sections 2 and 3] and the contingencies described in the reclamation and development grants program report to the 67th legislature titled: "Governor's Executive Budget Fiscal Years 2021 - 2023 Volume 5".

(3) Funds must be awarded up to the amounts approved in this section in the order of priority listed in subsection (4) until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. After all eligible projects are funded, remaining funds may be used for any reclamation and development project authorized under this section.

(4) The following are the prioritized grant projects:

Applicant (Project)	Amount
Philipsburg, Town of (Wastewater Treatment System Improvements, Metals Contaminated Sludge Removal and Disposal)	\$429,000
Mineral County Conservation District (Flat Creek Dispersed Tailings Removal and Restoration)	\$219,960

Missoula County (Ninemile Creek Placer Mine Reclamation)	\$351,000
Harlowton, City of (Contaminated Soils and Free Product Removal at the Harlowton Roundhouse in Harlowton, MT Phase 4)	\$500,000
Mineral County (Interim Remedial Action at Milwaukee Road - Haugan State Superfund Facility)	\$499,324
Powell County (Milwaukee Roundhouse Area Remediation - Phase 2)	\$500,000
Montana Tech - Montana Bureau of Mines and Geology (Modernization of Montana's Regional Seismic Network)	\$499,739
Montana Department of Environmental Quality (Landusky Swift Gulch High Flow Treatment System and Stream Rehabilitation)	\$411,199
Lewis and Clark County Water Quality Protection District (Grizzly Gulch Placer Mine Reclamation)	\$292,611
Lewistown, City of (Central Post and Treating Company CECRA Facility Phase II, Capping and Site Reclamation)	\$500,000
Sunburst, Town of (Town of Sunburst Suta South Clean Up Project)	\$185,805
City and County of Butte-Silver Bow (Butte Mining District: Reclamation and Protection Project, Phase V)	\$224,680
Ruby Valley Conservation District (Granite Creek Reclamation Realignment Project)	\$461,500
Deer Lodge Valley Conservation District (Upper French Gulch Fish Passage and Restoration Project)	\$194,832
Fort Peck Assiniboine and Sioux Tribes (Orphaned Oil Well Abandonment and Reclamation)	\$300,000
Ryegate, Town of (Former Ryegate Conoco Groundwater Remediation)	\$232,505

**Section 2. Coordination of fund sources for grants to political subdivisions and local governments.** A project sponsor listed under [section 1(4)] may not receive funds from both the reclamation and development grants program and the renewable resource grant and loan program for the same project during the same biennium.

**Section 3. Condition of grants.** Disbursement of funds under [section 1] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Any changes in scope of work or budget subsequent to legislative approval may not change project goals and objectives. Changes in activities that would reduce the public or natural resource benefits as presented in department of natural resources and conservation reports and applicant testimony to the 67th legislature may result in a proportional reduction in the grant amount.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the program report to the legislature for the biennium ending June 30, 2023, or, in the case of planning grants issued under [section 1(1)], completion of conditions specified at the time of written notification of approved grant authority.

(3) The project sponsor must have a fully executed grant agreement with the department.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal as presented to the legislature.

**Section 4. Other appropriations.** There is appropriated to any entity of state government that receives a grant under [section 1] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to entities from prior bienniums are reauthorized for completion of contract work.

**Section 5. Approval of grants – completion of biennial appropriation.** The legislature, pursuant to 90-2-1111, approves the reclamation and development grants listed in [section 1]. The authorization of these grants constitutes a biennial appropriation from the natural resources projects state special revenue account established in 15-38-302.

**Section 6. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 7. Coordination instruction.** (1) If both [this act] and an act that provides additional funding for reclamation and development grants from a source other than the natural resources projects state special revenue account established in 15-38-302 are passed and approved, the projects listed in [section 1(4) of this act] that do not receive funding from the appropriations in [section 1(2) of this act] may receive funding from the appropriation in the other act designated for reclamation and development grants in the order of completion of the conditions of [section 3 of this act] and to the extent that there is appropriation authority available.

(2) If both [section 1(1) of this act] and [section 1(1)(b) of House Bill No. 6] are passed and approved and if all of the \$800,000 in grant funds authorized in [section 1(1) of this act] are not expended for planning reclamation and development projects by the end of the biennium, then projects eligible for funding under [section 1(1)(b) of House Bill No. 6] are eligible to apply for funding under [section 1(1) of this act] for renewable resource project planning grants.

**Section 8. 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 9. Effective date.** [This act] is effective July 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 404

[HB 66]

AN ACT REAUTHORIZING THE SECURITIES RESTITUTION ASSISTANCE FUND; EXTENDING THE SUNSET DATE OF THE RESTITUTION FUND TO JUNE 30, 2027; AMENDING SECTIONS 30-10-115 AND 30-10-209, MCA; AMENDING SECTION 16, CHAPTER 58, LAWS OF 2011, AND SECTION 55, CHAPTER 151, LAWS OF 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 30-10-115, MCA, is amended to read:

**“30-10-115. Deposits to general fund – exceptions.** (1) Except as provided in subsection (2), all fees and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter must be deposited in the general fund.

(2) (a) All notice filing fees collected under 30-10-209(1)(d) and examination costs collected under 30-10-210 must be deposited in the state special revenue fund in an account to the credit of the state auditor’s office. [Subject to legislative fund transfer,] the funds allocated by this subsection (2)(a) to the state special revenue account may be used only to defray the expenses of the state auditor’s office in discharging its administrative and regulatory powers and duties in relation to notice filing under 30-10-209(1)(d) and examinations.

(b) Any fees in excess of the amount required for the purposes listed in subsection (2)(a) must be deposited in the general fund.

(c) On or after July 1, 2019, ~~4.5%~~ 3% of the total fees collected annually under 30-10-209(1)(b) must be deposited in the securities restitution assistance fund provided for in 30-10-1004. The remainder must be deposited in the general fund. On or after July 1, ~~2021~~ 2027, all fees collected annually under 30-10-209(1)(b) must be deposited in the general fund. (Bracketed language in subsection (2)(a) terminates June 30, 2021--sec. 1, Ch. 395, L. 2019.)”

**Section 2.** Section 30-10-209, MCA, is amended to read:

**“30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of \$200 for the first \$100,000 of initial issue or portion of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum fee of \$1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than \$200 or more than \$1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. The issuer shall pay a fee of \$50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is \$400 for original registration and \$400 for each annual renewal.

(b) (i) For registration of a salesperson or investment adviser representative, the fee:

(A) for an out-of-state salesperson or investment adviser representative is \$100 for original registration with each employer, \$100 for each annual renewal, and \$100 for each transfer; and

(B) for an in-state salesperson or investment adviser representative is \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer.

(ii) A salesperson who is registered as an investment adviser representative with a broker-dealer registered as an investment adviser is not required to pay the fee in subsection (2)(b)(i)(A) or (2)(b)(i)(B) to register as an investment adviser representative.

(c) For a federal covered adviser, the fee is \$400 for the initial notice filing and \$400 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is \$100.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

(6) (a) Except as provided in subsection (6)(b), all fees, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund.

(b) From March 7, 2013, through June 30, ~~2021~~ 2027, the fees collected under subsection (1)(b), the notice filing fees provided for in subsection (1)(d), and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2). On or after July 1, ~~2021~~ 2027, the notice filing fees provided for in subsection (1)(d) and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2)."

**Section 3.** Section 16, Chapter 58, Laws of 2011, is amended to read:

**“Section 16. Termination.** ~~{This act} terminates [Sections 1 through 9 and 11] terminate June 30, 2017 2027.”~~

**Section 4.** Section 55, Chapter 151, Laws of 2017, is amended to read:

**“Section 55. Termination.** ~~{This act} terminates [Sections 1 through 9 and 11] terminate June 30, 2017 2021 2027.”~~

**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.** [This act] is effective on passage and approval.

Approved May 7, 2021

## CHAPTER NO. 405

[HB 112]

AN ACT CREATING THE SAVE WOMEN'S SPORTS ACT; REQUIRING PUBLIC SCHOOL ATHLETIC TEAMS TO BE DESIGNATED BASED ON BIOLOGICAL SEX; PROVIDING A CAUSE OF ACTION FOR CERTAIN VIOLATIONS OF THE ACT; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Short title.** [Sections 1 through 3] may be cited as the “Save Women’s Sports Act”.

**Section 2. Designation of athletic teams.** (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public elementary or high school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education must be expressly designated as one of the following based on biological sex:

- (a) males, men, or boys;
- (b) females, women, or girls; or
- (c) coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.

**Section 3. Cause of action.** (1) A student who is deprived of an athletic opportunity or who suffers any direct or indirect harm as a result of a violation of [sections 1 through 3] may bring a cause of action for injunctive relief, damages, and any other relief available under law against the school or institution of higher education.

(2) A student who is subject to retaliation or other adverse action by a school, institution of higher education, or athletic association or organization as a result of reporting a violation of [sections 1 through 3] to an employee or representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or institutions of higher education in Montana may bring a cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization.

(3) A school or institution of higher education that suffers any direct or indirect harm as a result of a violation of [sections 1 through 3] may bring a cause of action for injunctive relief, damages, and any other relief available under law against the government entity, licensing or accrediting organization, or athletic association or organization.

**Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1 through 3].

**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. Contingent voidness.** [This act] is void 21 days after the date the United States secretary of education files a written report with the proper committees of the United States house of representatives and the United States senate as required by 34 CFR 100.8(c) due to the enforcement of [this act].

**Section 7. Effective date.** [This act] is effective July 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 406

[HB 233]

AN ACT REVISING AGE PARAMETERS RELATED TO SCHOOL FUNDING;  
REVISING THE DEFINITION OF PUPIL; ALLOWING CERTAIN STUDENTS

WITH DISABILITIES UP TO 21 YEARS OF AGE TO BE INCLUDED IN AVERAGE NUMBER BELONGING CALCULATIONS; AMENDING SECTIONS 20-1-101 AND 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 20-1-101, MCA, is amended to read:

**“20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accreditation standards” means the body of administrative rules governing standards such as:

- (a) school leadership;
- (b) educational opportunity;
- (c) academic requirements;
- (d) program area standards;
- (e) content and performance standards;
- (f) school facilities and records;
- (g) student assessment; and
- (h) general provisions.

(2) “Aggregate hours” means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

(3) “Agricultural experiment station” means the agricultural experiment station established at Montana state university-Bozeman.

(4) “At-risk student” means any student who is affected by environmental conditions that negatively impact the student’s educational performance or threaten a student’s likelihood of promotion or graduation.

(5) “Average number belonging” or “ANB” means the average number of regularly enrolled, full-time pupils physically attending or receiving educational services at an offsite instructional setting from the public schools of a district.

(6) “Board of public education” means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(7) “Board of regents” means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(8) “Commissioner” means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(9) “County superintendent” means the county government official who is the school officer of the county.

(10) “District superintendent” means a person who holds a valid class 3 Montana teacher certificate with a superintendent’s endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(11) (a) “Educational program” means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.

(b) The term does not include an educational program or programs used in 20-4-121 and 20-25-803.

(12) “K-12 career and vocational/technical education” means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(13) (a) “Minimum aggregate hours” means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.

(b) The term does not include lunch time and periods of unstructured recess.

(14) “Offsite instructional setting” means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

(15) “Principal” means a person who holds a valid class 3 Montana teacher certificate with an applicable principal’s endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

(16) “Pupil” means ~~a child who is 5 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but who has not yet reached 19 years of age and an individual who is admitted by the board of trustees pursuant to 20-5-101 and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense. The eligibility of pupils and calculations for average number belonging are governed by 20-9-311.~~

(17) “Pupil instruction” means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(18) “Qualified and effective teacher or administrator” means an educator who is licensed and endorsed in the areas in which the educator teaches, specializes, or serves in an administrative capacity as established by the board of public education.

(19) “Regents” means the board of regents of higher education.

(20) “Regular school election” or “trustee election” means the election for school board members held on the day established in 20-20-105(1).

(21) “School election” means a regular school election or any election conducted by a district or community college district for authorizing taxation, authorizing the issuance of bonds by an elementary, high school, or K-12 district, or accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this title.

(22) “School food services” means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

(23) “Special school election” means an election held on a day other than the day of the regular school election, primary election, or general election.

(24) “State board of education” means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

(25) "State university" means Montana state university-Bozeman.

(26) "Student with limited English proficiency" means any student:

(a) (i) who was not born in the United States or whose native language is a language other than English;

(ii) who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual's level of English proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and

(b) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:

(i) the ability to meet the state's proficiency assessments;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

(27) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

(28) "System" means the Montana university system.

(29) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

(30) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(31) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

(32) "Trustees" means the governing board of a district.

(33) "University" means the university of Montana-Missoula.

(34) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

**Section 2.** Section 20-9-311, MCA, is amended to read:

**"20-9-311. Calculation of average number belonging (ANB) – 3-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 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 the first Monday in February 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) Except as provided in subsection (4)(d), 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) Except as provided in subsection (4)(d), 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 school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the student has demonstrated proficiency.

(e) 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) (a) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(b) *Except as provided in subsection (7)(c), a pupil who has reached 19 years of age by September 10 of the school year may not be included in the ANB calculations.*

(c) *A pupil with disabilities who is over 19 years of age and has not yet reached 21 years of age by September 10 of the school year and who is receiving special education services from a school district pursuant to 20-7-411(4)(a) may be included in the ANB calculations if:*

*(i) the student has not graduated;*

*(ii) the student is eligible for special education services and is likely to be eligible for adult services for individuals with developmental disabilities due to the significance of the student's disability; and*

(iii) *the student's individualized education program has identified transition goals that focus on preparation for living and working in the community following high school graduation since age 16 or the student's disability has increased in significance after age 16.*

(d) *A school district providing special education services pursuant to subsection (7)(c) is encouraged to collaborate with agencies and programs that serve adults with developmental disabilities in meeting the goals of a student's transition plan.*

(8) The average number belonging of the regularly enrolled pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district, except that:

(a) the ANB is calculated as a separate budget unit when:

(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 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 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 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) when a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) when 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) when a school has been designated as nonaccredited by the board of public education because of failure to meet the board of public education's assurance and performance standards, the regularly enrolled 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.

(11) 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.

(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 (13)(a) and then combined.

(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 (14)(a) by three."

**Section 3. Effective date.** [This act] is effective July 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 407

[HB 247]

AN ACT REVISING MOTOR VEHICLE REGISTRATION; REQUIRING THE DEPARTMENT OF JUSTICE TO DEFINE THE NUMBER OF VEHICLES NEEDED TO CONSTITUTE A FLEET; EXEMPTING VEHICLES WITH FLEET LICENSE PLATES FROM NEEDING REGISTRATION DECALS TO BE AFFIXED; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 61-3-318, 61-3-323, 61-3-324, 61-3-325, AND 61-14-101, MCA.

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

**Section 1.** Section 61-3-318, MCA, is amended to read:

**"61-3-318. Fleet registration period.** (1) (a) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, a person owning or leasing a fleet may register its fleet for a 6-month or a 9-month period, commencing from the date of original registration.

(b) A motor vehicle remaining in the fleet at the end of a 6-month or a 9-month period must be reregistered for a minimum of 12 months.

(2) As used in this section, "fleet" means ~~more than 25~~ automobiles or trucks having a rated capacity of three-quarters of a ton or less that are rented or offered for rental without drivers and that are designated by a rental owner as a rental fleet *in a quantity set by the department pursuant to 61-14-101.*"

**Section 2.** Section 61-3-323, MCA, is amended to read:

**"61-3-323. Definitions.** As used in 61-3-323 through 61-3-325, unless the context requires otherwise, the following definitions apply:

(1) "Domicile" means the county in which a motor vehicle is most frequently used, dispatched, or controlled.

(2) "Fleet" means ~~100 or more~~ motor vehicles, trailers, semitrailers, or pole trailers owned or leased by a person operating the motor vehicles, trailers, semitrailers, or pole trailers in this state *in a quantity set by the department pursuant to 61-14-101.*"

**Section 3.** Section 61-3-324, MCA, is amended to read:

**“61-3-324. Fleet registration – application – additions to and deletions from fleet.** (1) A person owning or leasing a fleet may register the fleet annually through the department in lieu of registering each motor vehicle, trailer, semitrailer, or pole trailer in its domicile.

(2) ~~(a) Except as provided in subsection (2)(b), fleet registration information, as prescribed by the department, must be submitted to the department prior to November 1 of each year.~~

(b) The fleet owner or lessor and the department may enter into an agreement to change the registration period for the fleet in a manner that comports with the requirements of 61-3-311(3).

(3) A motor vehicle, trailer, semitrailer, or pole trailer may be added to the fleet at any time during the registration period. If a certificate of title for a vehicle to be added to the fleet has not been issued by the department, the fleet owner or lessor may submit the application for certificate of title directly to the department.

(4) A motor vehicle, trailer, semitrailer, or pole trailer may be removed from a fleet if the fleet owner or lessor notifies the department of its removal. Upon receipt of the notice, the department shall cancel the vehicle’s registration.”

**Section 4.** Section 61-3-325, MCA, is amended to read:

**“61-3-325. Fleet registration – license plates.** (1) (a) The department or an authorized agent shall compute fees and taxes due on each motor vehicle, trailer, semitrailer, or pole trailer in the fleet as provided in parts 3 and 5 of this chapter, based on its domicile.

(b) ~~Unless the fleet’s registration period is changed under 61-3-324, all fees and taxes must be paid no later than February 15 each year.~~

(2) The department may issue a separate series of license plates for fleet vehicles that do not require a registration decal to be affixed. Fleet series license plates may have the same background as standard license plates issued under 61-3-332 but may have a separate numbering system determined by the department pursuant to 61-14-101. ~~that have the same background as standard license plates issued under 61-3-332 but have a separate numbering system determined by the department.~~ At the request of the fleet owner or lessor and upon payment of all applicable fees, a license plate type other than the fleet plate may be issued to a fleet vehicle.”

**Section 5.** Section 61-14-101, MCA, is amended to read:

**“61-14-101. Rulemaking authority – vehicle services.** (1) The department shall adopt rules for the registration of motor vehicles, including:

(a) (i) simultaneous registration of multiple motor vehicles that have common ownership;

(ii) defining the term “fleet” as used in 61-3-318 and 61-3-323; and

(iii) the issuance of fleet series license plates provided for in 61-3-325;

(b) verification of compliance with 61-6-301 before registering or renewing a registration of a vehicle or issuing new license plates required by 61-3-332(3);

(c) devising a method to place license plates on the 5-year reissuance cycle to minimize production peaks and valleys;

(d) early registration renewals when an owner of a motor vehicle presents extenuating circumstances; and

(e) automated mailing of license plates by the department or its authorized agent, including an agent under contract with the department pursuant to 61-3-338.

(2) The department shall adopt rules to procure compliance with all of the laws of the state regulating the issuance of motor vehicle, trailer, semitrailer, or pole trailer licenses relating to the use and operation of motor vehicles,

trailers, semitrailers, or pole trailers before issuing the lettered license plates pursuant to 61-3-423.

(3) The department may adopt rules to establish vehicle brands or carried-forward brands according to 61-3-202.

(4) The department may adopt rules governing affidavit and bond for certificate of title pursuant to 61-3-208.

(5) The department may adopt rules for the implementation and administration of temporary registration permits, pursuant to 61-3-224, including issuance to:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle or vessel under Title 61, chapter 3;

(b) the owner of a salvage vehicle or a vehicle requiring a state-assigned vehicle identification number to move the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-107 or 61-3-212;

(c) the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered in this state for operation of the vehicle while awaiting production and receipt of special or duplicate license plates ordered for a vehicle under Title 61, chapter 3;

(d) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence;

(e) a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state;

(f) a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession;

(g) an insurer or its agent to move a motor vehicle or trailer to auction following acquisition of the vehicle by the insurer as a result of the settlement of an insurance claim;

(h) a nonresident owner to temporarily operate a quadricycle or motorcycle designed for off-road recreational use on the highways of this state when the quadricycle or motorcycle designed for off-road recreational use is equipped for use on the highways as prescribed in Title 61, chapter 9, but the quadricycle or motorcycle designated for off-road recreational use is not registered or is only registered for off-road use in the nonresident's home state; or

(i) a new owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certification of title.

(6) The department may adopt rules for the assessment and collection of registration fees on light vehicles under 61-3-321 and 61-3-562, including the proration of fees under 61-3-520 and criteria for determining the motor vehicle's age.

(7) The department may adopt rules for imposing and collecting fees in lieu of tax, including:

(a) the proration of fees in lieu of tax under 61-3-520 on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(b) criteria for determining the motor vehicle's age; and

(c) criteria for determining the manufacturer's rated capacity.

(8) The department may adopt rules, pursuant to Title 61, chapter 3, for the administration of fees for trailers, semitrailers, and pole trailers, including criteria for determining a trailer's age and weight.

(9) The department shall adopt rules for generic specialty license plates issued pursuant to 61-3-472 through 61-3-481, including:

(a) the minimum and maximum number of characters that a generic specialty license plate may display;

(b) the general placement of the sponsor's name, identifying phrase, and graphic; and

(c) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(10) The department may adopt rules governing dealers pursuant to the provisions of Title 61, chapter 4, including:

(a) the application and issuance of dealer licenses, including the qualifications of dealers, and the staggering of expiration dates pursuant to 61-4-101;

(b) the issuance of dealer, demonstrator, courtesy, and transit plates pursuant to 61-4-102, 61-4-128 through 61-4-130, 61-4-301, 61-4-307, and 61-4-308;

(c) the application and process for renewing a dealer license pursuant to 61-4-124; and

(d) governing the regulation of persons required to be licensed pursuant to Title 61, chapter 4, part 2.

(11) The department may adopt rules for local option tax appeals pursuant to 15-15-201.

(12) The department may adopt rules to implement any other provision of this title."

Approved May 7, 2021

## CHAPTER NO. 408

[HB 257]

AN ACT GENERALLY REVISING LAWS RELATED TO PROHIBITING ACTIONS THAT IMPEDE A PRIVATE BUSINESS'S ABILITY TO CONDUCT BUSINESS; PROHIBITING CERTAIN TYPES OF LOCAL GOVERNMENT ORDINANCES AND RESOLUTIONS; PROHIBITING AN EMERGENCY PLAN OR PROGRAM THAT RESTRICTS THE ABILITY OF A PRIVATE BUSINESS TO CONDUCT BUSINESS; PROHIBITING A LOCAL BOARD OF HEALTH AND LOCAL HEALTH OFFICER FROM CERTAIN ACTIONS THAT RESTRICT THE ABILITY OF A PRIVATE BUSINESS TO CONDUCT BUSINESS; AMENDING SECTIONS 7-1-111, 7-1-2103, 7-1-4124, 7-5-103, 7-5-121, 7-5-4201, 10-3-301, 50-2-116, 50-2-118, 50-2-123, AND 50-2-124, 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 7-1-111, MCA, is amended to read:

**"7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable

seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12; or

(22) *any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv).*"

**Section 2.** Section 7-1-2103, MCA, is amended to read:

**"7-1-2103. County powers.** A county has power to:

(1) *except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv)*, sue and be sued;

(2) purchase and hold lands within its limits;

(3) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;

(4) make orders for the disposition or use of its property that the interests of its inhabitants require;

(5) 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."

**Section 3.** Section 7-1-4124, MCA, is amended to read:

**"7-1-4124. Powers.** A municipality with general powers has the power, subject to the provisions of state law, to:

(1) enact ordinances and resolutions;

(2) *except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv)*, sue and be sued;

(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;

(4) contract with persons, corporations, or any other governmental entity;

(5) pay debts and expenses;

(6) borrow money;

(7) 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;

(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(9) make grants and loans of money, property, and services for public purposes;

(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(11) hire, direct, and discharge employees and appoint and remove members of boards;

(12) ratify any action of the municipality or its officers or employees that could have been approved in advance;

(13) have a corporate seal and flag;

(14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;

(15) initiate a civil action to restrain or enjoin violation of an ordinance;

(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;

(17) conduct a census;

(18) conduct inventories of public property and preparatory studies;

(19) condemn and demolish hazardous structures;

(20) purchase insurance and establish self-insurance plans;

(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines;

(23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in 7-1-4150; and

(24) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions.”

**Section 4.** Section 7-5-103, MCA, is amended to read:

**“7-5-103. Ordinance requirements.** (1) All ordinances must be submitted in writing in the form prescribed by resolution of the governing body.

(2) An ordinance passed may not:

(a) contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances;

(b) *compel a private business to deny a customer of the private business access to the premises or access to goods or services;*

(c) *deny a customer of a private business the ability to access goods or services provided by the private business; or*

(d) *include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(b) and (2)(c):*

(i) *allow for the assessment of a fee or fine;*

(ii) *require the revocation of a license required for the operation of a private business;*

(iii) *find a private business owner guilty of a misdemeanor; or*

(iv) *bring any other retributive action against a private business owner, including but not limited to criminal charges.*

(3) *The prohibition provided in subsection (2)(c) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.*

(4) *The prohibitions provided in subsections (2)(b) through (2)(d) do not apply to the adoption of an ordinance allowed in 75-7-411.*

(3)(5) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies must be made available to the public.

(4)(6) After passage and approval, all ordinances must be signed by the presiding officer of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

(7) *As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.*

**Section 5.** Section 7-5-121, MCA, is amended to read:

**"7-5-121. Resolution requirements.** (1) All resolutions ~~shall~~ *must* be submitted in the form prescribed by resolution of the governing body.

(2) *Resolutions may not:*

(a) *compel a private business to deny a customer of the private business access to the premises or access to goods or services;*

(b) *deny a customer of a private business the ability to access goods or services provided by the private business; or*

(c) *include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(a) and (2)(b):*

(i) *allow for the assessment of a fee or fine;*

(ii) *require the revocation of a license required for the operation of a private business;*

(iii) *find a private business owner guilty of a misdemeanor; or*

(iv) *bring any other retributive action against a private business owner, including but not limited to criminal charges.*

(3) *The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.*

(2)(4) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3)(5) After passage and approval, all resolutions ~~shall~~ *must* be entered into the minutes and signed by the chairperson of the governing body.

(6) *As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.*

**Section 6.** Section 7-5-4201, MCA, is amended to read:

**"7-5-4201. Municipal ordinances.** (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of... (or town of...)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in the mayor's stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) An ordinance may not:

(a) *include a prohibited action provided in 7-5-103; or*

(b) ~~contain~~ *be passed containing* more than one subject, which must be clearly expressed in its title, except ordinances for the codification and revision of ordinances."

**Section 7.** Section 10-3-301, MCA, is amended to read:

**“10-3-301. State disaster and emergency plan.** (1) The state disaster and emergency plan and program may provide for:

- (a) prevention and minimization of injury and damage caused by disaster;
- (b) prompt and efficient response to an incident, emergency, or disaster;
- (c) emergency relief;
- (d) identification of areas particularly vulnerable to disasters;
- (e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (f) organization of personnel and chains of command;
- (g) coordination of federal, state, and local disaster and emergency activities; and

(h) other necessary matters.

(2) *The state disaster and emergency plan and program may not:*

(a) *compel a private business to deny a customer of the private business access to the premises or access to goods or services; or*

(b) *deny a customer of a private business the ability to access goods or services provided by the private business.*

(3) *The prohibition provided for in subsection (2)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.*

(2)(4) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

(5) *As used in this section, “private business” means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.”*

**Section 8.** Section 50-2-116, MCA, is amended to read:

**“50-2-116. Powers and duties of local boards of health.** (1) *Except as provided in subsection (4), in* order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

- (a) appoint and fix the salary of a local health officer who is:
  - (i) a physician;
  - (ii) a person with a master’s degree in public health; or
  - (iii) a person with equivalent education and experience, as determined by the department;

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

(c) employ qualified staff;

(d) adopt bylaws to govern meetings;

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

(f) identify, assess, prevent, and ameliorate conditions of public health importance through:

(i) epidemiological tracking and investigation;

(ii) screening and testing;

(iii) isolation and quarantine measures;

(iv) diagnosis, treatment, and case management;

(v) abatement of public health nuisances;

(vi) inspections;

(vii) collecting and maintaining health information;

- (viii) education and training of health professionals; or
  - (ix) other public health measures as allowed by law;
  - (g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
  - (h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;
  - (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;
  - (j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.
  - (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.
- (2) Local boards of health may:
- (a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;
  - (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;
  - (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:
    - (i) for the control of communicable diseases;
    - (ii) for the removal of filth that might cause disease or adversely affect public health;
    - (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;
    - (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;
    - (v) for the establishment of institutional controls that have been selected or approved by the:
      - (A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or
      - (B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and
    - (vi) to implement the public health laws; and

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

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

(4) A regulation allowed in subsection (2)(c)(i), (2)(c)(ii), or (2)(c)(vi) adopted or a directive or order implemented to carry out the provisions of this part that applies to the entire jurisdictional area of a town, city, or county under the jurisdiction of the local health board may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(b) deny a customer of a private business the ability to access goods or services provided by the private business; or

(c) include any of the following actions for noncompliance of actions described in subsections (4)(a) and (4)(b):

(i) require the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to an action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge.

(5) The prohibition provided for in subsection (4)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

(6) The prohibitions provided for in subsection (4) do not restrict a local board of health from exercising its authority under this section to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders.

(7) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

**Section 9.** Section 50-2-118, MCA, is amended to read:

**"50-2-118. Powers and duties of local health officers.** (1) Except as provided in subsection (2), ~~in~~ in order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representatives shall:

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

(2)(b) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and canceling events;

(3)(c) report communicable diseases to the department as required by rule;

(4)(d) establish and maintain quarantine and isolation measures as adopted by the local board of health; and

(5)(e) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated.

(2) *A local health officer may not enforce a regulation, directive, or order or issue an order that is in violation of 50-2-116(4).*

(3) *The prohibitions provided for in 50-2-116(4) do not restrict a local health officer from exercising the health officer's authority under this section or 50-2-123 to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders.*"

**Section 10.** Section 50-2-123, MCA, is amended to read:

**"50-2-123. Compliance order authorized.** (1) If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses ~~shall~~ *must* be brought in the name of the city or county.

(2) *An order of compliance or action allowed pursuant to subsection (1) may not be initiated for an order that violates 50-2-116(4) or 50-2-118(2).*"

**Section 11.** Section 50-2-124, MCA, is amended to read:

**"50-2-124. Penalties for violations.** (1) A person who does not comply with rules adopted by a local board *that are not in conflict with 50-2-116(4) or 50-2-118(2)* is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$200.

(2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs."

**Section 12. Coordination instruction.** If House Bill No. 121 and [this act] are passed and approved and if both contain a section that amends 50-2-116, then the sections amending 50-2-116 are void and 50-2-116 must be amended as follows:

**"50-2-116. Powers and duties of local boards of health.** (1) *Except as provided in subsection (5), In* in order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) ~~appoint and fix the salary recommend to the governing body the appointment of~~ a local health officer who is:

(i) a physician;

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

(iii) a person with equivalent education and experience, as determined by the department;

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

~~(c) employ qualified staff;~~

~~(d)~~(c) adopt bylaws to govern meetings;

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

~~(f)~~(e) identify, assess, prevent, and ameliorate conditions of public health importance through:

(i) epidemiological tracking and investigation;

(ii) screening and testing;

(iii) isolation and quarantine measures;

(iv) diagnosis, treatment, and case management;

- (v) abatement of public health nuisances;
- (vi) inspections;
- (vii) collecting and maintaining health information;
- (viii) education and training of health professionals; or
- (ix) other public health measures as allowed by law;
- ~~(g)~~(f) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
- ~~(h)~~(g) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;
- ~~(i)~~(h) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;
- ~~(j)~~(i) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.
- ~~(k)~~(j) subject to the provisions of 50-2-130, ~~adopt~~ *propose for adoption by the local governing body* necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.
- (2) Local boards of health may:
  - (a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;
  - (b) ~~adopt~~ *propose for adoption by the local governing body* necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;
  - (c) ~~adopt~~ *propose for adoption by the local governing body* regulations that do not conflict with 50-50-126 or rules adopted by the department:
    - (i) for the control of communicable diseases;
    - (ii) for the removal of filth that might cause disease or adversely affect public health;
    - (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;
    - (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;
    - (v) for the establishment of institutional controls that have been selected or approved by the:

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

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

(vi) to implement the public health laws;

(d) *adopt rules necessary to implement and enforce regulations adopted by the local governing body; and*

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

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

*(4) A directive, mandate, or order issued by a local board of health in response to a declaration of emergency and/or or disaster by the governor as allowed in 10-3-302 and 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:*

*(a) remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and*

*(b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation of a religious facility, church, synagogue, or other place of worship.*

*(5) A regulation allowed in subsection (2)(c)(i), (2)(c)(ii), or (2)(c)(vi) adopted or a directive, mandate, or order implemented to carry out the provisions of this part that applies to the entire jurisdictional area of a town, city, or county under the jurisdiction of the local health board may not:*

*(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;*

*(b) deny a customer of a private business the ability to access goods or services provided by the private business; or*

*(c) include any of the following actions for noncompliance of actions described in subsections (4)(a) and (4)(b):*

*(i) require the assessment of a fee or fine;*

*(ii) require the revocation of a license required for the operation of a private business;*

*(iii) find a private business owner guilty of a misdemeanor; or*

*(iv) bring any other retributive action against a private business owner, including but not limited to an action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge.*

*(6) The prohibition provided for in subsection (5)(b) does not apply to persons confirmed to have a communicable disease and who are currently under a public isolation order.*

*(7) The prohibitions provided for in subsection (5) do not restrict a local board of health from exercising its authority under this section to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders.*

*(8) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term*

*includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.”*

**Section 13. Coordination instruction.** If House Bill No. 121 and [this act] are passed and approved and if both contain a section that amends 50-2-118, then the sections amending 50-2-118 are void and 50-2-118 must be amended as follows:

**“50-2-118. Powers and duties of local health officers.** (1) *Except as provided in subsection (3), In* in order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representatives shall:

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

(2)(b) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and canceling events;

(3)(c) report communicable diseases to the department as required by rule;

(4)(d) establish and maintain quarantine and isolation measures as adopted by the local board of health; and

(5)(e) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated.

(2) *A directive, mandate, or order issued by a local health officer in response to a declaration of emergency and/or or disaster by the governor as allowed in 10-3-302 and 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:*

(a) *remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and*

(b) *may not interfere with or otherwise limit, modify, or abridge a person’s physical attendance at or operation of a religious facility, church, synagogue, or other place of worship.*

(3) *A local health officer may not enforce a regulation, directive, mandate, or order or issue an order that is in violation of 50-2-116(5).*

(4) *The prohibitions provided for in 50-2-116(5) do not restrict a local health officer from exercising the local health officer’s authority under this section or 50-2-123 to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders.”*

**Section 14. Coordination instruction.** If House Bill No. 121 and [this act] are passed and approved and if both contain a section that amends 50-2-124, then the sections amending 50-2-124 are void and 50-2-124 must be amended as follows:

**“50-2-124. Penalties for violations.** (1) (a) *A person who does not comply with rules adopted by a local board that are not in conflict with 50-2-116(5) or 50-2-118(3) is guilty of a misdemeanor. On conviction, the person shall be fined subject to a civil penalty of not less than \$10 or more than \$200.*

(b) *A business entity that does not comply with rules adopted by a local board is subject to a civil penalty of not more than \$250.*

(2) *Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned for not more than 90 days, or both.*

(3) Each day of violation constitutes a separate offense.

(4) *The local board or the county attorney of the county in which a violation described in subsection (1) occurred may petition a court of limited jurisdiction to impose the civil penalties allowed in subsection (1). Venue for an action to collect a civil penalty pursuant to subsection (1) is in the county in which the violation occurred or in a court of limited jurisdiction.*

(4)(5) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs.

(6) (a) *As used in this section, "business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, sole proprietorship, or other legal entity recognized under state law.*

(b) *The term does not include an individual."*

**Section 15. Coordination instruction.** If House Bill No. 121 and [this act] are passed and approved, then the section amending 50-2-123 in [this act] is void and 50-2-123 must be amended as follows:

**"50-2-123. Compliance order authorized.** (1) If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

(2) *An order of compliance or action allowed pursuant to subsection (1) may not be initiated for an order that violates 50-2-116(5) or 50-2-118(3)."*

**Section 16. Effective date.** [This act] is effective on passage and approval.

**Section 17. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to local ordinances, resolutions, orders, regulations, mandates, directives, programs, and plans enacted, adopted, or in force on or after May 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 409

[HB 273]

AN ACT REPEALING THE LAWS AUTHORIZING THE PEOPLE OF THE STATE OF MONTANA THROUGH STATEWIDE VOTE TO APPROVE OR REJECT A PROPOSED NUCLEAR POWER FACILITY CERTIFIED UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-1-207, 75-2-103, 75-5-103, 75-20-104, AND 75-20-201, MCA; REPEALING SECTIONS 75-20-1201, 75-20-1202, 75-20-1203, 75-20-1204, AND 75-20-1205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-1-207, MCA, is amended to read:

**"75-1-207. Major facility siting applications excepted.** (1) Except as provided in subsection (2), a fee as prescribed by this part may not be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(2) The department of environmental quality may require payment of costs under 75-1-205(1)(a) by a person who files a petition under ~~75-20-201(5)~~ 75-20-201(4)."

**Section 2.** Section 75-2-103, MCA, is amended to read:

**“75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Air contaminant” means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination of those air contaminants.

(2) “Air pollutants” means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(3) “Air pollution” means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) “Associated supporting infrastructure” means:

- (a) electric transmission and distribution facilities;
- (b) pipeline facilities;
- (c) aboveground ponds and reservoirs and underground storage reservoirs;
- (d) rail transportation;
- (e) aqueducts and diversion dams;
- (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
- (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(5) “Board” means the board of environmental review provided for in 2-15-3502.

(6) (a) “Commercial hazardous waste incinerator” means:

- (i) an incinerator that burns hazardous waste; or
  - (ii) a boiler or industrial furnace subject to the provisions of 75-10-406.
- (b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) “Department” means the department of environmental quality provided for in 2-15-3501.

(8) “Emission” means a release into the outdoor atmosphere of air contaminants.

(9) ~~(a)~~ “Energy development project” means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- ~~(i)~~(a) generating electricity;
- ~~(ii)~~(b) producing gas derived from coal;
- ~~(iii)~~(c) producing liquid hydrocarbon products;
- ~~(iv)~~(d) refining crude oil or natural gas;
- ~~(v)~~(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- ~~(vi)~~(f) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- ~~(vii)~~(g) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

~~(b) The term does not include a nuclear facility as defined in 75-20-1202.~~

(10) “Environmental protection law” means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(11) “Hazardous waste” means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(12) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(13) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(14) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection (14)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

(15) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(16) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

- (17) “Small business stationary source” means a stationary source that:
- (a) is owned or operated by a person who employs 100 or fewer individuals;
  - (b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;
  - (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;
  - (d) emits less than 50 tons per year of an air pollutant;
  - (e) emits less than a total of 75 tons per year of all air pollutants combined;
- and
- (f) is not excluded from this definition under 75-2-108(3).

(18) (a) “Solid waste” means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation.”

**Section 3.** Section 75-5-103, MCA, is amended to read:

**“75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) “Associated supporting infrastructure” means:
  - (a) electric transmission and distribution facilities;
  - (b) pipeline facilities;
  - (c) aboveground ponds and reservoirs and underground storage reservoirs;
  - (d) rail transportation;
  - (e) aqueducts and diversion dams;
  - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
  - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) “Base numeric nutrient standards” means numeric water quality criteria 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.

(3) “Board” means the board of environmental review provided for in 2-15-3502.

(4) “Contamination” means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) “Council” means the water pollution control advisory council provided for in 2-15-2107.

(6) (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.

(7) “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).

(8) “Department” means the department of environmental quality provided for in 2-15-3501.

(9) “Disposal system” means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) “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.

(11) (a) “Energy development project” means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i)(a) generating electricity;

(ii)(b) producing gas derived from coal;

(iii)(c) producing liquid hydrocarbon products;

(iv)(d) refining crude oil or natural gas;

(v)(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi)(f) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii)(g) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12) “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.

(13) “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.

(14) “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.

(15) “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.

(16) “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.

(17) “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.

(18) “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.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "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.

(21) "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.

(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

(23) "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 nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

(24) "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.

(25) "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.

(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(27) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(29) "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.

(30) (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) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection (30)(b)(iii) does not require a mixing zone.

(31) "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.

(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(33) "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.

(34) (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.

(35) "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.

(36) "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.

(37) "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.

(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) "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.

(40) "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.

(41) "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.

(42) "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.

**75-5-103. (Effective on occurrence of contingency) Definitions.**

Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

- (a) electric transmission and distribution facilities;
- (b) pipeline facilities;
- (c) aboveground ponds and reservoirs and underground storage reservoirs;
- (d) rail transportation;
- (e) aqueducts and diversion dams;
- (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality criteria 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.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(6) (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.

(7) "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 insignificant pursuant to 75-5-301(5)(c).

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) "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.

(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i)(a) generating electricity;  
(ii)(b) producing gas derived from coal;  
(iii)(c) producing liquid hydrocarbon products;  
(iv)(d) refining crude oil or natural gas;  
(v)(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;  
(vi)(f) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or  
(vii)(g) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) ~~The term does not include a nuclear facility as defined in 75-20-1202.~~

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

(18) "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.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "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.

(21) "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.

(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of

technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

(23) "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 nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

(24) "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.

(25) "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.

(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(27) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(29) "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.

(30) (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) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections (30)(b)(iii) and (30)(b)(iv) does not require a mixing zone.

(31) “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.

(32) “Sewage system” means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(33) “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.

(34) (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.

(35) “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.

(36) “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.

(37) “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.

(38) “Treatment works” means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) “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.

(40) “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.

(41) “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.

(42) “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 4.** 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 (9)(a) or (9)(b), including upgrading to a design capacity covered by subsection (9)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) (a) “Commencement of acquisition of right-of-way” means the actual, defined legal transfer of property.

(b) The term does not mean preliminary discussions, option agreements that are not within 60 days of commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal transfer of property.

(8) “Department” means the department of environmental quality provided for in 2-15-3501.

(9) “Facility” means, ~~subject to 75-20-1202:~~

(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 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 electric transmission lines that are collectively less than 150 miles in length and are required under state or federal regulations and laws, with respect to reliability of service, for an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, biomass generation facility, or energy storage facility, as defined in 15-6-157, to interconnect to a regional transmission grid or secure firm transmission service to use the grid for which the person planning to construct the line or lines 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 or centerlines;

(iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (9)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the transmission network and protect electrical workers and the public.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(vi) does not include an energy storage facility, as defined in 15-6-157;

(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 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant, except that the term does not include a compressed air energy storage facility, as defined in 15-6-157; 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.

(10) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(11) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

~~(12) "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. "Transmission reliability agencies" means the federal energy regulatory commission, the western electricity coordinating council, the national electric reliability council, and the midwest reliability organization.~~

~~(13) "Transmission reliability agencies" means the federal energy regulatory commission, the western electricity coordinating council, the national electric reliability council, and the midwest reliability organization. "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.~~

(14) "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;
- (d) changing structure spacing, design, or guying; or
- (e) installing additional circuits.

(15) "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 5.** Section 75-20-201, MCA, is amended to read:

**"75-20-201. Certificate required – operation in conformance – certificate for nuclear facility – applicability to federal facilities.**

(1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

~~(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state:~~

~~(5)~~(4) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(9) may petition the department to review the energy-related project under the provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-157, is not considered an energy-related project under the provisions of this chapter.

A certificate for the construction or installation of an energy storage facility is not required under this chapter.

(6)(5) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7)(6) All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

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

75-20-1201. Purpose -- findings as to nuclear safety -- reservation of nuclear facility approval powers to the people.

75-20-1202. Definitions.

75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility.

75-20-1204. Annual review of evacuation and emergency medical aid plans.

75-20-1205. Emergency approval authority invalid for nuclear facilities.

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved May 7, 2021

## CHAPTER NO. 410

[HB 336]

AN ACT ESTABLISHING THE INTERSTATE COOPERATIVE MEATPACKING COMPACT; PROVIDING FOR COMMERCE BETWEEN STATES FOR STATE-INSPECTED MEAT; PROVIDING THAT STATE INSPECTIONS MUST BE AT LEAST EQUAL TO FEDERAL LAWS AND REGULATIONS; ESTABLISHING PARTICIPATION CRITERIA; PROVIDING FOR A COMPACT ADMINISTRATOR IN PARTICIPATING STATES; PROVIDING A PROCESS FOR DISPUTE RESOLUTION AND REVOCATION OF PARTICIPATION; PROVIDING DEFINITIONS; PROVIDING A CONTINGENT EFFECTIVE DATE; AND PROVIDING A TERMINATION DATE AND A CONTINGENT TERMINATION DATE.

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

**Section 1. Enactment – provisions – interstate cooperative program.** The Interstate Cooperative Meatpacking Compact is enacted into law with all other participating states in the following form:

Article I. Purpose

(1) The compacting states to this interstate compact recognize the importance of providing the public with a safe, wholesome, and unadulterated meat supply.

(2) The purpose of this compact, through joint and cooperative action among the compacting states is to:

(a) expand opportunities for the livestock and meatpacking economy throughout the western United States; and

(b) promote commerce between the compacting states.

(3) It is the policy of the compacting states to cooperate and to observe their individual and collective duties and responsibilities for the appropriate inspection, sanitation, recordkeeping, sampling, labeling, public health, and humane methods of slaughtering for those establishments subject to this compact.

(4) The intent of the compacting states is to maintain and enhance a state-based meat inspection process that is at least equal to applicable federal laws and rules, including the authorities under the:

(a) Federal Meat Inspection Act, 21 U.S.C. 501 through 695;

(b) federal Poultry Products Inspection Act, 21 U.S.C. 451 through 470, as those acts read on March 27, 2013;

(c) federal Humane Methods of Slaughter Act of 1978, 7 U.S.C. 1901, 1902, 1904, 1906, and 1907, as that act read on March 27, 2007;

(d) the labelling requirements of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 through 392, as that law read on October 1, 1987; and

(e) federal regulations promulgated under these federal acts.

#### Article II. Definitions

(1) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(2) "Interstate cooperative program" means the participating, compacting states that promise to adhere to this compact.

(3) "Livestock" means cattle, buffalo, sheep, swine, goats, rabbits, horses, mules, or other equines, whether alive or dead.

(4) "Livestock product" or "poultry product" means a product capable of use as human food that is wholly or partially made from meat.

(5) "Meat" means the edible flesh of livestock or poultry and includes livestock and poultry products. This term does not include cell-cultured edible products.

(6) "Meat establishment" means an establishment licensed by a state at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is maintained under applicable meat and poultry inspection laws, including those listed in Article I. The term includes a mobile slaughter facility.

(7) (a) "Retail food establishment" means an operation, whether mobile or at a temporary or stationary facility or location, that meets one or more of the conditions in subsections (7)(a)(i) and (7)(a)(ii) and that may include a central processing facility that supplies a transportation vehicle or a vending location or satellite feeding location. A retail food establishment:

(i) stores, processes, packages, serves, or vends food directly to the consumer or otherwise provides food for human consumption at a venue that may include:

(A) a restaurant;

(B) a market;

(C) a satellite or catered feeding location;

(D) a catering operation if the catering operation provides food directly to a consumer or to a conveyance used to transport people;

(E) a vending location;

(F) a conveyance used to transport people;

(G) an institution; or

(H) a food bank; and

(ii) relinquishes possession of food to a consumer directly or indirectly by using either a delivery service, as is done for grocery or restaurant orders, or a common carrier that provides deliveries.

(b) The term is not dependent on whether consumption is on or off the premises or whether there is a charge for food served to the public.

(c) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots;

(iii) growers or harvesters of raw agricultural commodities;

(iv) a cottage food operation;

(v) a person that sells or serves only commercially prepackaged foods that are not potentially hazardous;

(vi) a food stand that offers raw agricultural commodities;

(vii) a wholesale food establishment, including those wholesale food establishments that are located on the same premises as a retail food establishment;

(viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a nonprofit organization as provided in subsection (7)(c)(xiii);

(ix) custom meat and game animal processors that receive from an owner the remains of a carcass and process those remains for delivery to the owner for the exclusive use in the owner's household by the owner or members of the owner's household, including the owner's family pets, or of the owner's nonpaying guests or employees. For this exemption to apply, the carcass must be kept separate from other meat food products and parts that are to be prepared for sale.

(x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the public over no more than 4 days in a 12-month period;

(xi) a private organization that serves food only to its members and their guests;

(xii) a bed and breakfast, a hotel, a motel, a roominghouse, a guest ranch, an outfitting and guide facility, a boardinghouse, or a tourist home as defined in 50-51-102 that serves food only to registered guests and day visitors;

(xiii) a nonprofit organization that operates a temporary food establishment under a permit as provided in 50-50-120;

(xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot tea, or other food not meeting the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;

(xv) a day-care center under 52-2-721(1)(a) or day-care providers who are not subject to licensure under 52-2-721(1)(a);

(xvi) a private domestic residence that receives catered or home-delivered food;

(xvii) a contract cook; or

(xviii) a provider of free samples to the public as a marketing activity if the provider is a licensed wholesale food establishment, a cottage food operation, or a seller at a farmer's market.

(8) "Retail meat establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(9) "State" means a state within the United States, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

### Article III. Cooperative commerce

(1) A meat establishment in a compacting state may participate in the interstate cooperative program.

(2) A meat establishment participating in the interstate cooperative program may sell and transport meat, livestock products, or poultry products to a retail food establishment, retail meat establishment, or meat depot in another compacting state.

### Article IV. Applicability of other laws

This compact does not prohibit compacting states from participating in the United States department of agriculture food safety and inspection service's cooperative interstate shipment program.

### Article V. Compact administrator and interchange of information

(1) The head of the licensing authority of each party state is the administrator of this compact for the administrator's state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

### Article VI. Defaulting and resolution of disputes

(1) The administrator of each party state shall resolve disputes among the compacting states by simple majority vote.

(2) If the administrators determine that a compacting state has defaulted in the performance of any of its obligations or responsibilities under this compact, the administrators may suspend or revoke membership in the compact. The administrators may suspend a participating state only after all other reasonable means of securing compliance under the terms of this compact have been exhausted and the administrators have determined that the offending state is in default.

(3) On determining default, the administrators shall:

(a) immediately notify the defaulting state in writing of the penalty imposed by the administrators and a cure for the default; and

(b) stipulate the conditions and the time period within which the defaulting state shall cure its default.

(4) (a) If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state must be terminated from the compact on an affirmative vote of a majority of the compacting states. All rights, privileges, and benefits conferred by this compact must be terminated from the effective date of the termination.

(b) The administrators shall give immediate notice of suspension or termination to the governors of each state.

(5) The administrators may, by a simple majority vote, initiate legal action in the United States district court for the District of Columbia or other court of competent jurisdiction to enforce compliance with the provisions of the compact. If judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney fees.

### Article VII. Effective date and amendment

(1) The compact becomes effective and binding on legislative enactment of the compact into law by the participating states. The initial effective date is July 1, 2021. Thereafter, it becomes effective and binding as to any other compacting state on enactment of the compact into law by that state.

(2) The administrators may propose amendments to the compact for enactment by the compacting states. An amendment is effecting and binding

on the interstate commission and the compacting states when it is enacted into law by the consent of the compacting states.

**Article VIII. Severability**

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is unenforceable, the remaining provisions of the compact remain enforceable.

(2) The provisions of this compact must be liberally constructed to effectuate its purposes.

**Article IX. Withdrawal and termination**

(1) When effective, the compact must continue in force and remain binding on each compacting state. However, a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the compact administrators in each participating state on the introduction of legislation repealing this compact in the withdrawing state.

(4) Reinstatement following withdrawal of any compacting state must occur on the withdrawing state reenacting the compact or on a later date as determined by the compact administrators.

(5) The compact dissolves effective on the date of the withdrawal or default of the compacting state, which reduced membership in the compact to one compacting state.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 81, chapter 9, and the provisions of Title 81, chapter 9, apply to [section 1].

**Section 3. Contingent effective date.** (1) [This act] is effective on the date that either of the following occurs:

(a) the executive officer of the board of livestock certifies to the code commissioner that the Interstate Cooperative Meatpacking Compact has been ratified by the United States congress; or

(b) the attorney general certifies to the code commissioner that a court of competent jurisdiction has entered a final judgment on the merits finding that the Interstate Cooperative Meatpacking Compact is not preempted by federal law and the action is no longer subject to appeal.

(2) The executive officer of the board of livestock or the attorney general shall submit certification within 14 days of the occurrence of the contingency that occurs first.

**Section 4. Termination – contingency.** [This act] terminates on the earlier of:

(1) July 1, 2025; or

(2) the date that the executive officer of the board of livestock certifies to the code commissioner that the United States secretary of agriculture has designated the state as failing to meet provisions of the Federal Meat Inspection Act and the Poultry Products Inspection Act in accordance with 21 U.S.C. 661(c) and 21 U.S.C. 454(c). The executive officer shall submit certification within 30 days of the occurrence of the contingency.

Approved May 7, 2021

## CHAPTER NO. 411

[HB 426]

AN ACT REVISING LAWS RELATING TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO RESPOND TO REPORTS FROM THE OFFICE; ESTABLISHING A TIMELINE FOR RESPONSES; CLARIFYING THAT THE OMBUDSMAN MAY INDEPENDENTLY INVESTIGATE A MATTER BEING ADDRESSED IN ANOTHER MANNER; AND AMENDING SECTIONS 41-3-209, 41-3-1211, AND 41-3-1212, MCA.

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

**Section 1.** Section 41-3-209, MCA, is amended to read:

**“41-3-209. Reports to office of child and family ombudsman.** (1) The department shall report to the office of the child and family ombudsman:

(H) within 1 business day, a death of a child who, within the last 12 months:

- (a) had been the subject of a report of abuse or neglect;
- (b) had been the subject of an investigation of alleged abuse or neglect;
- (c) was in out-of-home care at the time of the child's death; or
- (d) had received services from the department under a voluntary protective services agreement;

(2) *The department shall report to the office of the child and family ombudsman* within 5 business days:

- (a) any criminal act concerning the abuse or neglect of a child;
- (b) any critical incident, including but not limited to elopement, a suicide attempt, rape, nonroutine hospitalizations, and neglect or abuse by a substitute care provider, involving a child who is receiving services from the department pursuant to this chapter; or
- (c) a third report received within the last 12 months about a child at risk of or who is suspected of being abused or neglected.

(3) *The department shall report to the ombudsman as required under 41-3-1212 on its response to findings, conclusions, and recommendations made in cases investigated by the ombudsman.”*

**Section 2.** Section 41-3-1211, MCA, is amended to read:

**“41-3-1211. Powers and duties.** The powers and duties of the ombudsman are:

- (1) to respond to requests for assistance regarding administrative acts and to investigate administrative acts;
- (2) to investigate circumstances surrounding reports that are provided to the ombudsman pursuant to 41-3-209;
- (3) to inspect, copy, or subpoena records as needed to perform the ombudsman's duties under this part;
- (4) to take appropriate steps to ensure that persons are made aware of the purpose, services, and procedures of the ombudsman and how to contact the ombudsman;
- (5) to share relevant findings related to an investigation, subject to disclosure restrictions and confidentiality requirements, with individuals or entities legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(6) *based on the investigations conducted, to provide oversight of the department's systems and policies for handling abuse and neglect cases;*

(6)(7) to periodically review department procedures and promote best practices and effective programs by working collaboratively with the department to improve procedures, practices, and programs;

(7)(8) to undertake, participate in, and cooperate with persons and the department in activities, including but not limited to conferences, inquiries, panels, meetings, or studies, that serve to improve the manner in which the department functions;

(8)(9) to provide education on the legal rights of children;

(9)(10) to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of carrying out the ombudsman's responsibilities; and

(10)(11) to report annually to the attorney general and the children, families, health, and human services interim committee. The report must be public and may contain recommendations from the ombudsman regarding systematic improvements for the department."

**Section 3.** Section 41-3-1212, MCA, is amended to read:

**"41-3-1212. Investigations – discretion – procedure.** (1) The ombudsman shall investigate a request for assistance unless:

(a) ~~the request for assistance could reasonably be addressed by another remedy or channel;~~

(b)(a) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;

(c)(b) the request for assistance is too delayed to justify an investigation;

(d)(c) the person requesting assistance is not personally aggrieved by the subject matter of the request; or

(e)(d) the request for assistance has been previously investigated by the ombudsman.

(2) *The ombudsman may investigate a request for assistance in a matter that is being or may reasonably be addressed by another remedy or channel, including a matter that is before a court.*

(3)(a) After an investigation is completed, the ombudsman shall provide to the department any findings, conclusions, and recommendations.

(b) ~~At the ombudsman's request, the~~ *The department shall inform the ombudsman in a timely manner no later than 60 days after receipt of the report about any action taken to address or on the actions the department is taking to resolve or correct any problems identified by the ombudsman. If the department has not resolved or corrected a problem, the department shall inform the ombudsman of any reasons for not addressing the ombudsman's findings, conclusions, and recommendations.*

(c) *The ombudsman shall include the following information in the report required under 41-3-1211:*

(i) *the number of findings reports made to the department;*

(ii) *the nature of the problems identified by the ombudsman;*

(iii) *the actions taken by the department to resolve or correct the problems;*  
and

(iv) *the problems that have not been resolved or corrected by the department, as well as the department's reasons for not addressing the ombudsman's findings, conclusions, and recommendations."*

Approved May 7, 2021

## CHAPTER NO. 412

[HB 449]

AN ACT REVISING LAWS REGARDING ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE; CREATING A REBUTTABLE PRESUMPTION THAT ELECTRONIC MONITORING BE IMPOSED AS A CONDITION OF PRETRIAL RELEASE WHEN AN OFFENSE INVOLVES FELONY PARTNER OR FAMILY MEMBER ASSAULT, STRANGULATION OF A PARTNER OR FAMILY MEMBER, FELONY STALKING, OR FELONY VIOLATION OF AN ORDER OF PROTECTION; AMENDING SECTION 46-9-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 46-9-108, MCA, is amended to read:

**“46-9-108. Conditions upon defendant’s release – notice to victim of stalker’s release.** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

- (a) the defendant may not commit an offense during the period of release;
- (b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;
- (c) the defendant shall maintain employment or, if unemployed, actively seek employment;
- (d) the defendant shall abide by specified restrictions on the defendant’s personal associations, place of abode, and travel;
- (e) the defendant shall avoid all contact with:
  - (i) an alleged victim of the crime, including in a case of partner or family member assault or strangulation of a partner or family member the restrictions contained in a no contact order issued under 45-5-209; and
  - (ii) any potential witness who may testify concerning the offense;
- (f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;
- (g) the defendant shall comply with a specified curfew;
- (h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;
  - (i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription; *The court may require an alcohol monitoring device that can detect the usage of alcohol by an individual and includes but is not limited to:*
    - (i) a transdermal alcohol monitoring unit; or
    - (ii) a facial recognition breathalyzer unit.
  - (j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;
  - (k) the defendant shall furnish bail in accordance with 46-9-401; or
  - (l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) (a) *If electronic monitoring is available, there is a rebuttable presumption that the court shall impose electronic monitoring as a condition of release when the offense is:*

(i) any felony assault on a partner or family member, as partner or family member is defined in 45-5-206;

(ii) strangulation of a partner or family member as defined in 45-5-215;

(iii) felony stalking as defined in 45-5-220; or

(iv) a felony violation of an order of protection as defined in 45-5-626.

(b) If electronic monitoring or alcohol monitoring under subsection (1)(i) is imposed, the court shall specify the terms under which the monitoring must be performed. The court may require as a condition of release that the defendant pay for the costs of the electronic monitoring or alcohol monitoring. If the defendant has not paid for electronic monitoring or alcohol monitoring as a condition of release, on conviction, the court shall require as a condition of the sentence that the defendant reimburse the providing agency for the costs of electronic monitoring or alcohol monitoring, unless the court determines that the defendant is not or will not be able to pay the costs.

(c) For the purposes of this subsection (2), "electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location, including but not limited to:

(i) radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(ii) active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location, and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party, or within the restricted distance of a designated location.

(2)(3) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3)(4) Whenever a person accused of a violation of 45-5-206, 45-5-215, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

**Section 2. Effective date.** [This act] is effective July 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 413

[HB 602]

AN ACT GENERALLY REVISING WARRANT REQUIREMENTS FOR DNA SEARCH RESULTS; REQUIRING A WARRANT FOR A SEARCH FROM A CONSUMER DNA DATABASE; REQUIRING A WARRANT FOR A FAMILIAL DNA SEARCH OR SEARCH RESULTS FROM PARTIAL MATCHING FROM THE STATE DNA IDENTIFICATION INDEX OR A CONSUMER DNA DATABASE; AND PROVIDING DEFINITIONS.

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

**Section 1. Consumer DNA database searches -- familial DNA searches -- warrant required.** (1) A government entity may not obtain DNA search results from a consumer DNA database:

(a) without a search warrant issued by a court on a finding of probable cause; or

(b) unless the consumer whose information is sought previously waived the consumer's right to privacy in the information.

(2) A government entity may not obtain familial DNA search results or search results from partial matching from the DNA identification index or a consumer DNA database without a search warrant issued by a court on a finding of probable cause.

(3) For the purposes of this section, the following definitions apply:

(a) "Consumer DNA database" means a database maintained by a private entity that provides direct-to-consumer genetic testing services.

(b) "DNA identification index" has the same meaning provided in 44-6-101.

(c) "Familial DNA search" means a search performed of a government or consumer DNA database using specialized software to detect and statistically rank a list of potential candidates in the DNA database who may be a close biological relative to the unknown individual contributing the evidence DNA profile. The specialized software search may be combined with lineage testing to help confirm or refute biological relatedness.

(d) "Lineage testing" means additional genetic testing used to help confirm or refute biological relatedness between the known individual in a DNA database and the unknown individual contributing the evidence DNA profile. Examples of additional genetic testing include but are not limited to:

(i) Y-STR analysis to examine STR patterns specific to the Y-chromosome used to determine paternally derived relatedness among DNA profiles;

(ii) mtDNA analysis to examine cell mitochondria used to determine maternally derived relatedness; or

(iii) single nucleotide polymorphism genotyping to generate results related to a person's ancestry and genetic predisposition to health-related topics.

(e) "Partial matching" means a moderate stringency search of a DNA database using routine search parameters that results in one or more partial matches between single-source and nondegraded DNA profiles that share at least one allele at each locus, indicating a potential familial relationship between the known individual in the DNA database and the unknown individual contributing the evidence DNA profile.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 44, chapter 6, part 1, and the provisions of Title 44, chapter 6, part 1, apply to [section 1].

Approved May 7, 2021

## CHAPTER NO. 414

[HB 610]

AN ACT ESTABLISHING THE TERRY SPOTTED WOLF, SR. MEMORIAL HIGHWAY IN BIG HORN COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Terry Spotted Wolf, Sr. was born and raised in Montana; and

WHEREAS, after completing the Montana State Law Enforcement Police Academy in 1976, Terry Spotted Wolf, Sr. joined the Northern Cheyenne Bureau of Indian Affairs Police Department; and

WHEREAS, Terry Spotted Wolf, Sr. served on the police force for more than a decade as an officer, sergeant, lieutenant, police captain, and chief of police; and

WHEREAS, Terry Spotted Wolf, Sr. served with distinction, earning two awards for bravery and receiving a certification of commendation award from the American Legion and many letters of commendation from his superior officers; and

WHEREAS, Terry Spotted Wolf, Sr. was selected as police officer of the year in 1979; and

WHEREAS, while driving a patrol car one morning, Terry Spotted Wolf, Sr. heard over the radio that another Bureau of Indian Affairs officer was pursuing a vehicle with a suspected drunk driver; and

WHEREAS, Terry Spotted Wolf, Sr. immediately turned his patrol car around and began driving to assist his fellow officer in the high-speed pursuit; and

WHEREAS, Terry Spotted Wolf, Sr. was killed in the line of duty when his patrol car was involved in an accident, causing Terry Spotted Wolf, Sr. to be fatally injured; and

WHEREAS, the 67th Legislature of the State of Montana honors Terry Spotted Wolf, Sr.

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

**Section 1. Terry Spotted Wolf, Sr. memorial highway.** (1) There is established the Terry Spotted Wolf, Sr. memorial highway on the existing U.S. highway 212 from mile marker 26 to mile marker 27.

(2) The department shall design and install appropriate signs marking the location of the Terry Spotted Wolf, Sr. memorial highway.

(3) Maps that identify roadways in the state must be updated to include the location of the Terry Spotted Wolf, Sr. memorial highway when the department updates and publishes the state maps.

**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 May 7, 2021

## CHAPTER NO. 415

[HB 641]

AN ACT REVISING LAWS RELATED TO SEARCH AND RESCUE UNITS; AUTHORIZING A SEARCH AND RESCUE UNIT TO POSSESS HUMAN REMAINS FOR TRAINING SEARCH AND RESCUE CANINES; REVISING LAWS RELATED TO ANATOMICAL GIFTS TO ALLOW SEARCH AND RESCUE UNITS AS AUTHORIZED DONEES IN CERTAIN CIRCUMSTANCES; ALLOWING MONETARY DONATIONS FOR THE SUPPORT AND TRAINING OF SEARCH AND RESCUE UNITS; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 7-32-235, 17-7-502, AND 72-17-202, MCA.

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

**Section 1.** Section 7-32-235, MCA, is amended to read:

**“7-32-235. Search and rescue units authorized – under control of county sheriff – optional funding.** (1) A county may establish or recognize one or more search and rescue units within the county.

(2) (a) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(b) A county sheriff or the sheriff's designee may authorize the participation of members of the civil air patrol, including cadets under 18 years of age, in search and rescue operations.

(3) Subject to 15-10-420, a county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax on the taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held as provided in 15-10-425.

(4) *A search and rescue unit established or recognized by a county may possess human remains as defined in 37-19-101 for the purpose of training canines used for search and rescue work.*

*(a) The county sheriff or the sheriff's designee shall keep an inventory of all human remains that are kept for the purpose of training search and rescue canines. The inventory must be updated when the search and rescue unit receives human remains or disposes of human remains that are no longer useful to the search and rescue unit.*

*(b) Each search and rescue unit that possesses human remains for the purpose of training search and rescue canines shall establish policies and standard operating procedures for access to, the inventory of, and the possession and disposal of human remains kept for the purpose of training search and rescue canines.”*

**Section 2. Account for search and rescue unit training and support.** (1) (a) Subject to legislative fund transfer, there is a special revenue account within the state special revenue fund established in 17-2-102 for county search and rescue unit training and support services.

(b) There must be deposited in the account all monetary contributions, gifts, and donations for the purposes of providing educational and training services, equipment, and other materials necessary for the operation of a search and rescue unit established or recognized by a county as allowed in 7-32-235.

(c) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of administration and may only be used for those purposes provided in this section.

(2) A county sheriff may request to receive funding from the special revenue account created in this section to provide additional training, support, or equipment to one or more search and rescue units in the county established or recognized under 7-32-235.

**Section 3.** 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; 5-13-404; 7-4-2502; [section 2]; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 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; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-151; 76-13-150; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-6-331; 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 contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019,

the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; and pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023.)”

**Section 4.** Section 72-17-202, MCA, is amended to read:

**“72-17-202. Persons who may become donees – purposes for which anatomical gifts may be made.** (1) The following persons may become donees of anatomical gifts for the purposes stated if named in the document of gift:

(a) a hospital, surgeon, physician, or procurement organization, an accredited medical school, dental school, college, or university, or another appropriate person for education or research, *a search and rescue unit established or recognized by a county as provided in 7-32-235, or persons certified by a state or local law enforcement agency to train search and rescue canines;*

(b) subject to subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(c) an eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) cannot be transplanted into the individual, the part passes in accordance with subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate organ procurement organization.

*(e) If the part is for the purpose of training a search and rescue canine as allowed in 7-32-235(4), the gift passes to the search and rescue unit established or recognized by the county in which the gift was made. A county coroner or sheriff may transfer the gift to an established or recognized canine search and rescue unit in another county or to a person certified by a state or local law enforcement agency to train search and rescue canines if the county in which the gift was made has not established or recognized a search and rescue unit.*

(4) For the purpose of subsection (3), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the anatomical gift must be used for transplantation or therapy, if suitable. If the anatomical gift cannot be used for transplantation or therapy, the gift may be used for:

(a) research or education; or

(b) *the training of search and rescue canines.*

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy and the gift passes in accordance with subsection (7).

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor”, “organ donor”, or “body donor” or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy and the gift passes in accordance with subsection (7).

(7) For purposes of subsections (2), (5), and (6), the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b), passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) or the decedent’s body or part is not used for transplantation, therapy, research, or education, or *training search and rescue canines*, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) If the donee knows of the decedent’s refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under 72-17-214, the donee may not accept the anatomical gift. For the purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the anatomical gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b), nothing in this section affects the allocation of organs for transplantation or therapy.”

**Section 5. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 7, chapter 32, part 2, and the provisions of Title 7, chapter 32, part 2, apply to [section 2].

Approved May 7, 2021

## CHAPTER NO. 416

[HB 644]

AN ACT ESTABLISHING THE TRIBAL COMPUTER PROGRAMMING BOOST SCHOLARSHIP PROGRAM; ASSIGNING ADMINISTRATION OF THE TEACHER PROFESSIONAL DEVELOPMENT COMPONENT OF THE PROGRAM TO THE OFFICE OF PUBLIC INSTRUCTION AND THE INCENTIVIZED STUDENT TRAINING COMPONENT OF THE PROGRAM TO THE DEPARTMENT OF LABOR AND INDUSTRY; DESCRIBING THE PURPOSES AND PARAMETERS OF THE PROGRAM; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Tribal computer programming boost scholarship program.** (1) There is a tribal computer programming boost scholarship program. The purpose of the program is to:

(a) support the development of computer programming courses at high schools located on Indian reservations in the state;

(b) increase interest among Indian students in pursuing computer programming and other technology-related careers; and

(c) enhance technology-related economic development in Indian country.

(2) (a) The office of public instruction shall administer the teacher professional development component of the program and develop criteria to determine scholarship awardees.

(b) Scholarships under the program must be used to support the professional development of high school teachers responsible for technology instruction and currently employed or with a contract for employment in a high school located on an Indian reservation in the state or in a high school serving members of the Little Shell Chippewa tribe.

(c) The scholarships may be for up to \$2,000 and may only be used to defray the expenses of professional development for a teacher that results in the creation or refinement of world-class computer programming courses offered at the teacher's high school. The professional development must include coursework or other activities taken at a unit of the Montana university system or a community college or tribal college located in the state.

(3) (a) The department of labor and industry shall administer the incentivized student training component of the program and develop criteria to award grants to organizations to implement incentivized student training programs.

(b) An organization awarded a grant shall:

(i) deliver a self-paced computer coding training program to eligible youth in tribal communities to prepare students for in-demand technology occupations;

(ii) incentivize successful completion of training milestones by providing cash or other equivalent stipends to eligible youth. Eligible youth may be paid stipends for time spent receiving instruction and for participating in unpaid work-based learning opportunities.

(iii) work with industry partners to develop youth apprenticeship and registered apprenticeship opportunities, internships, and other programs to be made available to eligible youth who complete the training program; and

(iv) provide eligible youth with information and exposure to computer science-related career and job opportunities, including the degrees or credentials required to be qualified for various opportunities, locations where the degrees or credentials may be obtained, and what secondary and postsecondary education coursework would benefit a participant who would like to pursue a computer science-related career.

(c) The department of labor and industry shall utilize available federal workforce funds and may accept contributions and donations from individuals and industry partners for the purpose of this subsection (3).

(d) For the purposes of this subsection (3), the term "eligible youth" has the same meaning as in section 3102 of the Workforce Innovation and Opportunity Act, 29 U.S.C. 32.

(4) The education interim committee established in 5-5-224 shall include the monitoring of this program in its duties for the 2021 and 2022 interim and may request reports from the office of public instruction and the department of labor and industry on the implementation of the program. The education interim committee shall make available any information it acquires on the program to the state-tribal relations committee established in 5-5-229 and is encouraged to collaborate with the state-tribal relations committee in its monitoring of the program and on any modifications to the program.

**Section 2. Appropriation.** There is appropriated \$32,000 from the general fund to the office of public instruction for each fiscal year of the

biennium beginning July 1, 2021, for the purpose of the teacher professional development aspect of the tribal computer programming boost scholarship program established in [section 1(2)]. The office of public instruction shall provide funding for at least two high school teachers currently employed or with a contract for employment in a high school located on each of the seven Indian reservations in Montana and in a high school or schools serving members of the Little Shell Chippewa tribe.

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [section 1].

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

**Section 6. Termination.** [This act] terminates June 30, 2025.

Approved May 7, 2021

## CHAPTER NO. 417

[HB 696]

AN ACT GENERALLY REVISING LAWS RELATED TO CRISIS INTERVENTION TEAMS; REVISING THE ADMINISTRATION OF THE PROGRAM; REQUIRING REPORTING TO THE LEGISLATURE; PROVIDING AN APPROPRIATION; AMENDING SECTION 44-7-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 44-7-110, MCA, is amended to read:

**“44-7-110. Crisis intervention team training program – rulemaking.** (1) Within the limits of available funds, the board of crime control shall ~~develop and administer~~ *and support* a crisis intervention team training program to increase the number of law enforcement officers, behavioral health providers, and community stakeholders who are trained to respond safely and effectively to incidents that involve an individual who is experiencing a behavioral health crisis.

(2) ~~Local law enforcement agencies governments,~~ including tribal ~~law enforcement agencies governments,~~ and ~~nonprofit law enforcement organizations~~ are eligible to receive grant funding. Grant funds must be used to ~~provide specialized training to help officers help law enforcement, advocacy, mental health, and community providers to:~~

(a) ~~provide specialized training to law enforcement officers to help officers recognize and properly respond to individuals with a mental illness or behavioral health problem, including strategies for verbal de-escalation and crisis intervention techniques; and~~

(b) best utilize or establish collaborative programs that enhance the ability of law enforcement agencies to coordinate with community-based service providers to address the behavioral health problems of individuals typically encountered by law enforcement officers in the line of duty.

(3) The board may also contract directly with a nonprofit organization to provide or coordinate community-based training programs ~~or to develop best practices and standards.~~

(4) In administering the crisis intervention team training program, the board shall:

(a) identify and disseminate data and technical assistance to local law enforcement and to community stakeholders on established *national and international* best practices or develop statewide best practices for community-based law enforcement responses to individuals experiencing a behavioral health crisis;

(b) identify priorities for funding services, activities, and criteria for the receipt of program funds, including that the training offered should incorporate the best practices identified or developed by the board *in conjunction with stakeholders*;

(c) monitor the expenditure of funds by organizations receiving funds under this section;

(d) evaluate the effectiveness of services and activities under this section;

(e) adopt rules as needed to implement this section; and

(f) to the extent practicable, coordinate with existing statewide organizations that identify best practices, develop training models, and collect data to avoid duplication of efforts.

(5) *The board shall report, in accordance with 5-11-210, on the status of the program to the law and justice interim committee by September 15 of each even-numbered year.*

~~(5)~~(6) (a) Funds available under subsection (1) consist of state appropriations and federal funds received by the board for the purposes of administering *and supporting* the crisis intervention team training program or any funds received pursuant to subsection ~~(5)(b)~~ (6)(b). The board shall actively seek federal grant money that may be used for the purposes of this section.

(b) The board may accept gifts, grants, and donations from other public or private sources, which must be used within the scope of this section.

(c) The board may utilize up to 10% of funds appropriated for costs incurred to administer the program.”

**Section 2. Appropriation.** There is appropriated \$75,000 from the general fund to the board of crime control for each year of the biennium beginning July 1, 2021. The appropriation must be used for the purposes of providing crisis intervention team training as provided in 44-7-110.

**Section 3. Effective date.** [This act] is effective July 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 418

[HB 702]

AN ACT PROHIBITING DISCRIMINATION BASED ON A PERSON'S VACCINATION STATUS OR POSSESSION OF AN IMMUNITY PASSPORT; PROVIDING AN EXCEPTION AND AN EXEMPTION; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES.

WHEREAS, as stated in section 50-16-502, MCA, the Legislature finds that “health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient’s interests in privacy and health care or other interests”; and

WHEREAS, the Montana Supreme Court in *State v. Nelson*, 283 Mont. 231, 941 P.2d 441 (1997), concluded that “medical records fall within the zone of privacy protected by Article II, section 10, of the Montana Constitution” and “are quintessentially private and deserve the utmost constitutional protection”.

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

**Section 1. Discrimination based on vaccination status or possession of immunity passport prohibited – definitions.** (1) Except as provided in subsection (2), it is an unlawful discriminatory practice for:

(a) a person or a governmental entity to refuse, withhold from, or deny to a person any local or state services, goods, facilities, advantages, privileges, licensing, educational opportunities, health care access, or employment opportunities based on the person's vaccination status or whether the person has an immunity passport;

(b) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment based on the person's vaccination status or whether the person has an immunity passport; or

(c) a public accommodation to exclude, limit, segregate, refuse to serve, or otherwise discriminate against a person based on the person's vaccination status or whether the person has an immunity passport.

(2) This section does not apply to vaccination requirements set forth for schools pursuant to Title 20, chapter 5, part 4, or day-care facilities pursuant to Title 52, chapter 2, part 7.

(3) (a) A person, governmental entity, or an employer does not unlawfully discriminate under this section if they recommend that an employee receive a vaccine.

(b) A health care facility, as defined in 50-5-101, does not unlawfully discriminate under this section if it complies with both of the following:

(i) asks an employee to volunteer the employee's vaccination or immunization status for the purpose of determining whether the health care facility should implement reasonable accommodation measures to protect the safety and health of employees, patients, visitors, and other persons from communicable diseases. A health care facility may consider an employee to be nonvaccinated or nonimmune if the employee declines to provide the employee's vaccination or immunization status to the health care facility for purposes of determining whether reasonable accommodation measures should be implemented.

(ii) implements reasonable accommodation measures for employees, patients, visitors, and other persons who are not vaccinated or not immune to protect the safety and health of employees, patients, visitors, and other persons from communicable diseases.

(4) An individual may not be required to receive any vaccine whose use is allowed under an emergency use authorization or any vaccine undergoing safety trials.

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

(a) "Immunity passport" means a document, digital record, or software application indicating that a person is immune to a disease, either through vaccination or infection and recovery.

(b) "Vaccination status" means an indication of whether a person has received one or more doses of a vaccine.

**Section 2. Exemption.** A licensed nursing home, long-term care facility, or assisted living facility is exempt from compliance with [section 1] during any period of time that compliance with [section 1] would result in a violation of regulations or guidance issued by the centers for medicare and medicaid services or the centers for disease control and prevention.

**Section 3. Appropriation.** There is appropriated \$200 from the general fund to the department of labor and industry for the biennium beginning July 1, 2021, for the purposes of:

(1) notifying local boards of health of the requirements of [section 1] and requiring local boards of health to prominently display notice of the requirements of [section 1] on the home page of their website, if available, for at least 6 months after [the effective date of this act]; and

(2) requiring the department of public health and human services to prominently display notice of the requirements of [section 1] on the home page of the department's website for at least 6 months after [the effective date of this act].

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 49, chapter 2, part 3, and the provisions of Title 49, chapter 2, part 3, apply to [sections 1 and 2].

**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.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 419

[SB 44]

AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION SANITATION REVIEW; PROVIDING DEFINITIONS; EXTENDING RULEMAKING AUTHORITY; ALLOWING LOCAL ENTITIES TO ESTABLISH FEES FOR SUBDIVISION AND SUBDIVISION EXEMPTION REVIEW; REVISING SUBDIVISION EXEMPTIONS; REQUIRING NOTIFICATION TO PURCHASERS FOR CERTAIN UNREVIEWED LOTS; AND AMENDING SECTIONS 76-4-102, 76-4-103, 76-4-104, 76-4-105, 76-4-111, 76-4-113, 76-4-125, 76-4-129, 76-4-130, AND 76-4-131, MCA.

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

**Section 1.** Section 76-4-102, MCA, is amended to read:

**“76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Adequate county water and/or sewer district facilities” means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.

(2) “Adequate municipal facilities” means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

(3) “Board” means the board of environmental review.

(4) “Certifying authority” means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under 76-4-104(6).

(5) “Department” means the department of environmental quality.

(6) “Extension of a public sewage system” means a sewerline that connects two or more sewer service lines to a sewer main.

(7) “Extension of a public water supply system” means a waterline that connects two or more water service lines to a water main.

(8) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(9) "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.

(10) "Mixing zone" has the meaning provided in 75-5-103.

(11) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this chapter after March 30, 2011.

(b) The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.

(12) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under this chapter after October 1, 2013.

(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

(13) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

(14) "Public water supply system" has the meaning provided in 75-6-102.

(15) "Regional authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

(15)(16) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(16)(17) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(17)(18) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

(18)(19) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal, facilities until the department has approved plans for those facilities.

(19)(20) "Sewage" has the meaning provided in 75-5-103.

(20)(21) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(21)(22) "Solid waste" has the meaning provided in 75-10-103.

(22)(23) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any ~~area~~ parcel, regardless of size, that provides ~~two or more~~ permanent multiple-space spaces for recreational camping vehicles or mobile homes.

(23)(24) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

(24)(25) "Well isolation zone" means the area within a 100-foot radius of a water well."

**Section 2.** Section 76-4-103, MCA, is amended to read:

**76-4-103. What constitutes subdivision.** ~~A subdivision consists of only those parcels of less than 20 acres that have been created by a division of land, and the~~ *The plat for a subdivision must show all of the parcels, whether*

contiguous or not. *A parcel that is 20 acres or more in size, exclusive of public roadways, is not subject to review under this part, unless the parcel provides two or more permanent spaces for recreational camping vehicles or mobile homes. The rental or lease of one or more parts of a single building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.*”

**Section 3.** Section 76-4-104, MCA, is amended to read:

**“76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified by the department to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways, *except that the rules must provide a basis for not requiring storm water review under this part for parcels 5 acres and larger on which the total impervious area does not and will not exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75, chapter 5, or rules adopted pursuant to Title 75, chapter 5;*

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the *proposed* ~~proposed~~ subdivision where the proposed drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the ~~proposed~~ subdivision where the proposed drainfield or proposed well is located.

(i) A proposed *drainfield* mixing zone or a proposed well isolation zone for an individual water system well that is a minimum of 50 feet inside the ~~proposed~~ subdivision boundary may extend outside the boundaries of the ~~proposed~~ subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(ii) This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the subdivision application under this chapter. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(m) eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under the provisions of 76-4-127.

(7) *The requirements of subsection (6)(i) regarding proposed drainfield mixing zones and proposed well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after [the effective date of this act], except as provided in subsections (6)(i)(i) and (6)(i)(ii).*

(7)(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(8)(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

(9)(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622.”

**Section 4.** Section 76-4-105, MCA, is amended to read:

**“76-4-105. Subdivision fees – subdivision program funding.**

(1) The department shall adopt rules setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local reviewing authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108.

(3) *The local reviewing authority may establish a fee to review applications, conduct site visits, and review applicable exemptions under this chapter. The fee must be paid directly to the local reviewing authority and may not exceed the local reviewing authority’s actual cost that is not otherwise reimbursed by the department from fees adopted pursuant to this section.”*

**Section 5.** Section 76-4-111, MCA, is amended to read:

**“76-4-111. Exemption for certain condominiums, townhomes, and townhouses.** (1) Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land ~~divided~~ *subdivided* in compliance

with *parts 5 and 6* of the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living *units, duplexes, or commercial* units, the construction or conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that, if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension.”

**Section 6.** Section 76-4-113, MCA, is amended to read:

“**76-4-113. Notification to purchasers.** The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved type and locations of water supply, storm water drainage, and sewage disposal facilities and information regarding connection to municipal, ~~or~~ county water and/or sewer district, *or regional authority* facilities provided for under 76-4-130. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. *The seller of any lot recorded with the exemption in 76-4-125(1)(c) shall include within the instruments of transfer a reference to that exclusion and a statement that the lot has not been reviewed or approved under this part.* A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction.”

**Section 7.** Section 76-4-125, MCA, is amended to read:

“**76-4-125. Land divisions excluded from review.** (1) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

- (a) the exclusion cited in 76-3-201;
  - (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;
  - (c) divisions made for purposes other than the construction of water supply or sewage ~~and~~ *or* solid waste disposal facilities as the department specifies by rule;
  - (d) as certified pursuant to 76-4-127:
    - (i) new divisions subject to review under the Montana Subdivision and Platting Act;
    - (ii) divisions or previously divided parcels recorded with sanitary restrictions; or
    - (iii) divisions or *previously divided* parcels of land that are exempt from the Montana Subdivision and Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);
  - (e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:
    - (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter;
- or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter; and

(f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).

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

(3) *A previously divided parcel that meets the eligibility criteria for an existing exemption from this part may use the exemption in lieu of obtaining a certificate of subdivision approval if the appropriate document, exemption certificate, certificate of survey or subdivision plat filed with the county clerk and recorder cites the applicable exemption in its entirety.*

**Section 8.** Section 76-4-129, MCA, is amended to read:

**“76-4-129. Joint application form and concurrent review.**

(1) ~~Within 90 days after July 1, 1977, the department shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.~~

(2) ~~The review required by this part and the provisions of chapter 3 shall may occur concurrently subject to the requirements of 76-4-115.”~~

**Section 9.** Section 76-4-130, MCA, is amended to read:

**“76-4-130. Deviation from certificate of subdivision approval.**

(1) Except as provided in subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

(2) A person may deviate from the certificate of subdivision approval without approval by the reviewing authority if the deviation consists solely of connecting to municipal, ~~or county water and/or sewer district, or regional authority facilities~~ in place of previously approved facilities. The department may require notification when a person connects to municipal, ~~or county water and/or sewer district, or regional authority facilities.”~~

**Section 10.** Section 76-4-131, MCA, is amended to read:

**“76-4-131. Applicability of public water supply laws.** ~~The An exclusions exclusion provided for in 76-4-121, 76-4-122, 76-4-125, and 76-4-130(2) this part does do not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6.”~~

Approved May 7, 2021

## CHAPTER NO. 420

[SB 76]

AN ACT REVISING CAPTIVE INSURANCE LAWS PERTAINING TO THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION ACCOUNT; INCREASING THE PERCENTAGE OF PREMIUM TAX PAID INTO THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION ACCOUNT; PROVIDING FOR FUND TRANSFERS; AND AMENDING SECTION 33-28-120, MCA.

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

**Section 1.** Section 33-28-120, MCA, is amended to read:

**“33-28-120. Captive insurance regulatory and supervision account.** (1) There is an account in the state special revenue fund called the captive insurance regulatory and supervision account, which may be referred to as the captive account.

(2) The purpose of the captive account is to provide the financial means for the commissioner to administer this chapter and for reimbursement of reasonable expenses incurred in promoting captive insurance in this state.

(3) (a) *Five Twenty* percent of the premium tax collected under 33-28-201 and all fees and assessments received by the commissioner pursuant to the administration of this chapter must be deposited in the captive account.

(b) All fines and administrative penalties collected pursuant to this chapter must be deposited in the general fund.

(4) All payments from the captive account for the maintenance of staff and associated expenses, including necessary contractual services, may only be disbursed from the state treasury upon warrants issued by the commissioner, after receipt by the commissioner of proper documentation regarding services rendered and expenses incurred.

(5) At the end of each fiscal year, the balance in the captive account must be transferred to the general fund.”

**Section 2. Transfer of funds.** (1) For fiscal year 2022, the state auditor shall transfer \$229,500 from the state special revenue fund to the credit of the state auditor’s office into the general fund.

(2) For fiscal year 2023, the state auditor shall transfer \$237,000 from the state special revenue fund to the credit of the state auditor’s office into the general fund.

Approved May 7, 2021

## CHAPTER NO. 421

[SB 142]

AN ACT INCREASING THE NUMBER OF CHILDREN WHO CAN RECEIVE DAY CARE AT A GROUP DAY-CARE HOME OR FAMILY DAY-CARE HOME; AND AMENDING SECTION 52-2-703, MCA.

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

**Section 1. Group day-care and family day-care homes – staffing requirements.** There must be at least two caregivers caring for the children at all times when there are more than eight children present at a group day-care home.

**Section 2.** Section 52-2-703, MCA, is amended to read:

**“52-2-703. Definitions.** In this part, the following definitions apply:

(1) “Child” means a person under 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.

(2) “Day care” or “child care” means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular or irregular basis, as applicable, for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours.

(3) (a) “Day-care center” means an out-of-home place in which day care is provided to ~~13~~ 16 or more children on a regular or irregular basis.

(b) The term does not include a place where day care is provided if a parent of a child for whom day care is provided remains on the premises.

(4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis, as provided for in subsection (3)(a), or for children suffering from illness. The term includes a family day-care home, a day-care center, a group day-care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

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

(6) "Family day-care home" means a private residence in which day care is provided to ~~three to six~~ *three to eight* children on a regular basis.

(7) "Group day-care home" means a private residence or other structure in which day care is provided to ~~7 to 12~~ *9 to 15* children on a regular basis.

(8) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(9) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(10) "Professional training" means training for early childhood or school-age care providers that is recognized as professional development by a national education or certification organization or by a higher education institution.

(11) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(12) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify compliance with the prescribed standards and promulgated rules.

(13) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(14) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(15) (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (15)(a) in a step or adoptive relationship.

(16) "School age" means a person who is at least 5 years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.

(17) "School-age care" means an adult-supervised program that is provided for school-age children during nonschool hours."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, part 7, and the provisions of Title 52, chapter 2, part 7, apply to [section 1].

Approved May 7, 2021

## CHAPTER NO. 422

[SB 149]

AN ACT PROVIDING FOR THE ESTABLISHMENT OF HEALTH CARE SHARING MINISTRIES; DEFINING HEALTH CARE SHARING MINISTRY; PROVIDING FOR DISCLAIMERS ON MATERIALS DISTRIBUTED BY HEALTH CARE SHARING MINISTRIES; EXEMPTING HEALTH CARE SHARING MINISTRIES FROM REGULATION AS INSURANCE; AND AMENDING SECTIONS 33-1-102 AND 33-1-201, MCA.

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

**Section 1. Health care sharing ministry -- definition -- requirements.** (1) As used in this section, "health care sharing ministry" means a nonprofit organization:

(a) that is tax-exempt as described in section 501(c)(3) of the Internal Revenue Code and is exempt from taxation under section 501(a);

(b) whose members:

(i) share a common set of ethical or religious beliefs; and

(ii) share medical expenses among members in accordance with those beliefs without regard to the state in which a member resides or is employed;

(c) whose members retain membership even after developing a medical condition;

(d) that conducts an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and that is made available to the public on request; and

(e) that does not use a compensated or commissioned insurance producer, representative, or other person to solicit or enroll members in this state. This subsection (1)(e) does not apply to:

(i) a salaried person employed by the health care sharing ministry who does not receive a form of commission, compensation, or other valuable consideration based on the enrolling of new members; or

(ii) a new member referral program providing credit for existing members of the health care sharing ministry if the program is limited to credit for no more than six new members annually.

(2) A health care sharing ministry shall provide a written disclaimer in 12-point font on or accompanying all applications or guideline materials distributed by or on behalf of the health care sharing ministry that states in substance:

"NOTICE: The health care sharing ministry facilitating the sharing of medical expenses is not an insurance company and does not use insurance agents or pay commissions to insurance agents. The health care sharing ministry's guidelines and plan of operation are not an insurance policy. Without health care insurance, there is no guarantee that you, a fellow member, or any other person who is a party to the health care sharing ministry agreement will be protected in the event of illness or emergency. Regardless of whether you receive any payment for medical expenses or whether the health care sharing

ministry terminates, withdraws from the faith-based agreement, or continues to operate, you are always personally responsible for the payment of your own medical bills. If your participation in the health care sharing ministry ends, state law may subject you to a waiting period before you are able to apply for health insurance coverage.”

**Section 2.** Section 33-1-102, MCA, is amended to read:

**“33-1-102. Compliance required – exceptions – health service corporations – health maintenance organizations – governmental insurance programs – service contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers’ compensation insurance programs provided for in Title 39, chapter 71, part 21, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A “service contract” means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect

in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) Except as provided in 33-2-2212, this code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by Title 30, chapter 14, part 22.

(15) *This code does not apply to a health care sharing ministry that meets the requirements of [section 1].*

**Section 3.** Section 33-1-201, MCA, is amended to read:

**“33-1-201. Definitions – insurance in general.** For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) “Alien insurer” is an insurer formed under the laws of any country other than the United States or its states, districts, territories, and commonwealths.

(2) “Authorized insurer” is an insurer duly authorized by a certificate of authority issued by the commissioner to transact insurance in this state.

(3) “Domestic insurer” is an insurer incorporated under the laws of this state.

(4) “Foreign insurer” is an insurer formed under the laws of any jurisdiction other than this state. Except when distinguished by context, the term includes an alien insurer.

(5) (a) “Insurance” is a contract through which one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(b) Insurance does not include:

(i) contracts for the installation, maintenance, and provision of inside telecommunications wiring to residential or business premises; or

(ii) *an arrangement with a health care sharing ministry that meets the requirements of [section 1].*

(6) (a) “Insurer” includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions listed in 33-30-102.

(b) *The term does not include a health care sharing ministry that meets the requirements of [section 1].*

(7) “Resident domestic insurer” is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are individuals who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by individuals who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) "State", when used in relation to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, means to:

(a) solicit;

(b) negotiate;

(c) sell or effectuate a contract of insurance; or

(d) transact matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) "Unauthorized insurer" is an insurer not authorized by a certificate of authority issued by the commissioner to transact insurance in this state."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 4, part 1, and the provisions of Title 50, chapter 4, part 1, apply to [section 1].

Approved May 7, 2021

## CHAPTER NO. 423

[SB 214]

AN ACT GENERALLY REVISING THE TEMPORARY PROPERTY TAX EXEMPTION FOR TRIBAL PROPERTY; REQUIRING THE DEPARTMENT OF REVENUE TO NOTIFY THE COUNTY IN WHICH THE PROPERTY IS LOCATED OF THE EXEMPTION APPLICATION AND APPROVAL OF THE EXEMPTION; PROVIDING FOR RECAPTURE OF TAXES IF THE TRUST APPLICATION IS DENIED OR NOT APPROVED WITHIN 5 YEARS; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTION 15-6-230, 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 15-6-230, MCA, is amended to read:

**"15-6-230. Temporary exemption for certain tribal property – rulemaking.** (1) Subject to ~~subsection~~ *subsections (2) and (3)*, property owned in fee by a federally recognized Indian tribe located within the boundaries of the state of Montana is temporarily exempt from taxation on January 1 after the following conditions are met:

(a) the United States department of the interior, bureau of Indian affairs, has determined that the initial written request or trust application submitted by the tribe is complete; and

(b) the tribe has submitted a timely property tax exemption application to the department and the department has approved the tribe's exemption application.

(2) *Prior to approving the exemption application, the department shall notify the county in which the property is located. On approval of an exemption pursuant to this section, the department shall provide the approved application to the county in which the property is located.*

(2)(3) The temporary exemption applies only for the timeframe during which a decision on the trust application is officially pending before the United States department of interior, bureau of Indian affairs, but the exemption may

not exceed a period of 5 years and ceases earlier if the United States denies the trust application.

(3)(4) For tax years following the department's approval of the exemption, the tribe shall annually certify to the department that the trust application is still under consideration by the United States department of interior, bureau of Indian affairs, and has not been denied. The exemption applies only for tax years for which the department has received a timely certification from the affected tribe. *The department shall provide the annual certification to the county in which the property is located.*

(4)(5) If a trust application has been denied, the temporary exemption expires on December 31 of the year in which the trust application was denied. The temporary exemption is no longer available for property associated with a trust application that has been denied.

(6) (a) *Property for which a trust application is denied or for which the 5-year exemption period expires and the trust application remains pending before the United States department of the interior, bureau of Indian affairs, is subject to a recapture of property taxes. The recaptured tax is equal to the tax that would have been assessed using the tax rates, the mill levies, and the appraised value for each year in which the property was exempt under this section. The department shall provide the taxable value to the county treasurer for collection of taxes subject to recapture.*

(b) *The department shall continue to appraise property granted an exemption under this section until a trust application is approved by the United States department of the interior, bureau of Indian affairs. The appraised value is only for use for calculating the recapture provided for in this section and may not be included in the taxable value provided to taxing jurisdictions.*

(5)(7) If the United States takes tribally owned property out of trust, the property is subject to tax as otherwise provided by federal and state law.

(6)(8) The department may adopt rules to implement the provisions of this section."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

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

**Section 4. Applicability.** [This act] applies to applications for exemption received on or after [the effective date of this act].

Approved May 7, 2021

## CHAPTER NO. 424

[SB 232]

AN ACT REVISING LAWS RELATED TO HIGHWAY PATROL OFFICER COMPENSATION; REQUIRING THAT THE SALARY SURVEY USED TO ESTABLISH THE BASE SALARY FOR HIGHWAY PATROL OFFICERS INCLUDE CERTAIN CITY POLICE DEPARTMENTS; AND AMENDING SECTION 2-18-303, MCA.

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

**Section 1.** Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for administering broadband pay plan.**

(1) On the first day of the first complete pay period in fiscal year 2020, each employee is entitled to the amount of the employee's base salary as it was on June 30, 2019.

(2) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(3) Effective on the first day of the first complete pay period that includes January 1, 2020, the base salary of each employee must be increased by 50 cents an hour. Effective on the first day of the first complete pay period that includes January 1, 2021, the base salary of each employee must be increased by 50 cents an hour.

(4) (a) (i) A member of a bargaining unit may not receive the pay adjustment provided for in subsection (3) until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a collective bargaining agreement.

(ii) If ratification of a collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration consistent with the purpose of this part and necessary to properly implement the pay adjustments provided for in this section may be provided for in collective bargaining agreements.

(5) (a) Montana highway patrol officer base salaries must be established through the broadband pay plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary for existing and entry-level highway patrol officer positions. The county sheriff's offices ~~in~~ *and the city police departments located within the county seats of* the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The department of justice shall submit the salary survey to the office of budget and program planning as a part of the information required by 17-7-111.

(d) The salary survey and plan must be completed at least 6 months before the start of each regular legislative session."

Approved May 7, 2021

## CHAPTER NO. 425

[SB 234]

AN ACT PROVIDING THE UNEMPLOYMENT INSURANCE PROGRAM INTEGRITY ACT; PROVIDING DEFINITIONS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO VERIFY THE INTEGRITY OF THE UNEMPLOYMENT INSURANCE ROLLS; REQUIRING REPORTING TO THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Short title.** [Sections 1 through 4] may be cited as the “Unemployment Insurance Program Integrity Act”.

**Section 2. Purpose.** The purpose of [sections 1 through 4] is to enhance program integrity for the state’s unemployment insurance program by requiring the state to utilize a government or commercially available database to verify the integrity of the state’s unemployment insurance rolls, check new hire records against unemployment insurance rolls on a weekly basis, and check state, county, and local prison and jail records.

**Section 3. Definitions.** For the purposes of [sections 1 through 4], the following definitions apply:

(1) “Department of corrections” means the Montana department of corrections as provided in 2-15-2301.

(2) “New hire records” means the directory of newly hired and rehired employees reported under state and federal law and managed by the department of labor.

(3) “Unemployment insurance rolls” means jobless workers receiving unemployment insurance benefits.

**Section 4. Department duties – integrity data hub – review of information – reporting to legislature.** The department of labor shall:

(1) engage with and utilize a commercially available database to verify the integrity of the state’s unemployment insurance rolls to verify the integrity of the state’s unemployment insurance rolls;

(2) on a weekly basis, check the unemployment insurance rolls against the department of corrections list of incarcerated individuals to verify eligibility and ensure program integrity;

(3) on a weekly basis, check the unemployment insurance rolls against the national directory of new hires to verify eligibility;

(4) have the authority to execute a memorandum of understanding with any department, agency, or division for information required to be shared between agencies as outlined in [sections 1 through 4];

(5) if it receives information concerning an individual receiving unemployment insurance benefits that indicates a change in circumstances that may affect eligibility, review the individual’s case; and

(6) report to the economic affairs interim committee in accordance with 5-11-210 relating to the administration of [sections 1 through 4].

**Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to [sections 1 through 4].

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

Approved May 7, 2021

## CHAPTER NO. 426

[SB 243]

AN ACT REVISING DOMICILE PRESUMPTIONS FOR PURPOSES OF DETERMINING IN-STATE CLASSIFICATION FOR TUITION PURPOSES; ESTABLISHING A PRESUMPTION THAT A MEMBER OF THE MONTANA NATIONAL GUARD IS DOMICILED IN MONTANA; AMENDING SECTION 20-25-503, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 20-25-503, MCA, is amended to read:

**“20-25-503. Presumptions and rules as to domicile.** (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of the minor’s guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if the person is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates who are citizens or resident aliens of the United States are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; and

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for the adult’s spouse or any dependent minor child, or both. If the person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces residency in any other state and is not in the state primarily as a student, the person’s spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as the person continues a Montana domicile. In the administration of this subsection, neither the full-time employee or spouse is eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse.

(8) *A member of the Montana national guard as defined in 10-1-101 is presumed to be domiciled in the state for purposes of qualifying for in-state tuition classification for a postsecondary certificate or undergraduate, postgraduate, or professional degree program.”*

**Section 2. Effective date.** [This act] is effective July 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 427

[SB 263]

AN ACT GENERALLY REVISING CLASS 10 PROPERTY TAXATION OF FOREST LANDS; REVISING THE TAX RATE ON FOREST PRODUCTIVITY VALUE; AMENDING SECTION 15-6-143, 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 15-6-143, MCA, is amended to read:

**“15-6-143. Class ten property -- description -- taxable percentage.**

(1) Class ten property includes all forest lands, as defined in 15-44-102, and property described in subsection (2).

(2) Any parcel of growing timber totaling less than 15 acres qualifies as class ten property if, in a prior year, the parcel totaled 15 acres or more and qualified as forest land but the number of acres was reduced to less than 15 acres for a public use described in 70-30-102 by the federal government, the state, a county, or a municipality and, since that reduction in acres, the parcel has not been further divided.

(3) Class ten property is taxed at:

(a) 0.34% of its forest productivity value in tax year 2021;

(b) 0.31% of its forest productivity value in tax year 2022; and

(c) 0.37% of its forest productivity value in tax years after 2022.”

**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 property tax years beginning after December 31, 2020.

Approved May 7, 2021

## CHAPTER NO. 428

[SB 284]

AN ACT WAIVING CERTAIN COSTS INCURRED BY COUNTIES, CITIES, AND TOWNS RELATED TO OPENCUT MINING OPERATIONS; AMENDING SECTIONS 76-22-116 AND 82-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 76-22-116, MCA, is amended to read:

**“76-22-116. Compensatory mitigation reduction or waiver.**

(1) ~~The~~ *Except as provided in subsection (3), the* oversight team shall consider on a case-by-case basis requests for a reduction in or waiver of compensatory mitigation based upon an assessment including but not limited to the following:

(a) a project that is located at least six-tenths of a mile from the center of an active lek but for which it is economically infeasible to be located more than 2 miles from the center of an active lek;

(b) the economic benefit to the local community and the project developer;

(c) whether the project is undertaken and completed outside of the sage grouse mating season; or

(d) whether the project involves one-time construction and does not require ongoing disturbance once completed, except for occasional routine maintenance of existing facilities.

(2) The oversight team shall provide a summary of the reasons why a reduction in or waiver of compensatory mitigation is approved or denied.

(3) *Compensatory mitigation may be waived for opencut operations located outside of core areas and at least six-tenths of a mile from the center of an active lek if the permit pursuant to 82-4-431 is held by a county, city, or town in the state.”*

**Section 2.** Section 82-4-405, MCA, is amended to read:

**“82-4-405. Inapplicability to government.** (1) ~~Except as provided in subsection (2), the~~ *The* provisions of this part relating to fees or bonds do not

apply to the federal government or its agencies, the state of Montana, counties, cities, or towns.

~~(2) Counties, cities, and towns are responsible for the fees required pursuant to 82-4-437(2) and (3)."~~

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

Approved May 7, 2021

## CHAPTER NO. 429

[SB 285]

AN ACT ALLOWING ANY TYPE OF RETAIL TRANSACTION AS EVIDENCE FOR ESTIMATING AGRICULTURAL USAGE OF GASOLINE; AMENDING SECTION 15-70-430, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 15-70-430, MCA, is amended to read:

**"15-70-430. Estimate allowed for agricultural use – seller's signed statement acceptable on keylock or cardtroll purchases.** (1) (a) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of gasoline or special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtroll purchases as an estimate of off-highway use.

(b) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of *gasoline or* special fuel as indicated by evidence of retail purchases as an estimate of off-highway use.

(c) To ensure that the applicant's use qualifies as agricultural use, the department of transportation may request state or federal income tax information from the applicant or the department of revenue to determine the ratio of the applicant's gross earned farm income to total gross earned income, excluding unearned income, provided that the department of transportation gives notice to the applicant.

(2) (a) For purposes of application for a refund under subsection (1)(a), the department shall accept, as evidence of keylock or cardtroll purchases, a statement of the sale of gasoline or special fuel with applicable Montana tax that identifies the purchaser and specifically identifies the transaction as a keylock or cardtroll purchase.

(b) For purposes of application for a refund under subsection (1)(b), the department shall accept, as evidence of retail purchases, a receipt for the sale of *gasoline or* special fuel with applicable Montana tax that identifies the purchaser, the physical address of the dealer, the type of fuel purchased, and the number of gallons purchased. Only retail purchases within 50 miles of the agricultural operation of the applicant are eligible for a refund.

(3) An applicant may apply for a refund of the applicable tax on gallons of gasoline or special fuel according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

(a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the gasoline or special fuel tax;

(b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the gasoline or special fuel tax;

(c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the gasoline or special fuel tax; and

(d) if the ratio is less than 30%, the applicant is not eligible for a refund of the gasoline or special fuel tax under this section.

(4) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

(5) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence that may be required by the department of transportation.

(6) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-426."

**Section 2. Effective date.** [This act] is effective July 1, 2021.

Approved May 7, 2021

## CHAPTER NO. 430

[SB 288]

AN ACT REVISING THE PROPERTY TAX EXEMPTION FOR AGRICULTURAL PROCESSING FACILITIES; EXPANDING THE EXEMPTION TO ALL TYPES OF OILSEED PROCESSING FACILITIES; REMOVING THE EMPLOYMENT REQUIREMENT; AMENDING SECTION 15-6-220, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-6-220, MCA, is amended to read:

**"15-6-220. Agricultural processing facilities exemption.** (1) The following property is exempt from property taxation:

(a) machinery and equipment used in ~~a canola seed oil an oilseed~~ processing facility;

(b) machinery and equipment used in a malting barley facility;

(c) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(d) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

(e) machinery and equipment used in a pulse processing facility; and

(f) machinery and equipment used in a hemp processing facility.

(2) ~~"Canola seed oil processing facility"~~ means a facility that:

~~(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and~~

~~(b) employs at least 15 employees in a full-time capacity.~~

(3)(2) "Hemp processing facility" means a facility and integral machinery and equipment placed into production after December 31, 2019, used principally to process hemp in accordance with a license issued by the department of agriculture under Title 80, chapter 18.

(4)(3) "Industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

~~(5)~~(4) “Industrial milk processor” means a facility and integral machinery used solely to process milk into milk products for export from the state.

~~(6)~~(5) “Malting barley facility” means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.

(6) “Oilseed” means camelina, canola, flax, mustard, rapeseed, safflower, sunflower, and soybean.

(7) “Oilseed processing facility” means a facility that extracts oil from oilseeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of these processes.

~~(7)~~(8) “Pulse crops” means dry peas, lentils, chickpeas, and fava beans.

~~(8)~~(9) “Pulse processing facility” means a facility and integral machinery and equipment placed into service after December 31, 2017, and used principally to process pulse crops. The term includes machinery and equipment used to mix, split, transport within the facility, transfer, extract protein from, dry, or handle any pulse crop. (Subsections (1)(e), ~~(7)~~ (8), and ~~(8)~~ (9) terminate December 31, 2027--sec. 3, Ch. 383, L. 2017; subsections (1)(f) and ~~(3)~~ (2) terminate December 31, 2029--sec. 3, Ch. 290, L. 2019.)”

**Section 2. Applicability.** [This act] applies to property tax years beginning after December 31, 2021.

Approved May 7, 2021

## CHAPTER NO. 431

[SB 308]

AN ACT GENERALLY REVISING BANKING LAWS; PROVIDING FOR THE MUTUAL SAVINGS AND LOAN ASSOCIATION ACT; PROVIDING ADMINISTRATIVE HEARING AND PENALTIES; PROVIDING CRIMINAL LIABILITIES; PROVIDING FOR EXAMINATIONS BY THE DEPARTMENT; PROVIDING FOR MUTUAL ASSOCIATIONS; PROVIDING FOR DEPARTMENT RULEMAKING; PROVIDING REPORTS FOR THE DEPARTMENT; PROVIDING FOR CONFIDENTIALITY; PROVIDING PROHIBITED PRACTICES; PROVIDING FOR FORMATION OF A MUTUAL ASSOCIATION; PROVIDING FOR DEPARTMENT INVESTIGATIONS; PROVIDING FOR ARTICLES OF INCORPORATION AND BYLAWS REQUIREMENTS; PROVIDING FOR A CERTIFICATE OF AUTHORITY TO COMMENCE BUSINESS; PROVIDING FOR CONVERSION FROM A FEDERAL MUTUAL SAVINGS AND LOAN TO A STATE MUTUAL SAVINGS AND LOAN; PROVIDING FOR CONVERSIONS INTO FEDERAL SAVINGS AND LOAN ASSOCIATIONS; PROVIDING REQUIREMENTS OF A STATE MUTUAL ASSOCIATION; PROVIDING REQUIREMENTS FOR MEMBERSHIP IN A FEDERAL HOME LOAN BANK; PROVIDING FOR MERGERS OF MUTUAL ASSOCIATIONS; PROVIDING FOR SALES OF BRANCHES; PROVIDING FOR BUILDING AND LOAN ASSOCIATIONS AND REQUIREMENTS; PROVIDING FOR INVESTMENT IN CERTAIN SECURITIES; PROVIDING FOR CERTIFIED CHECKS; PROVIDING DEPOSIT REQUIREMENTS; PROVIDING GENERAL PROVISIONS; PROVIDING DEPARTMENT RESPONSIBILITY; PROVIDING FORMATION AND REORGANIZATION REQUIREMENTS; PROVIDING FOR OPERATION

AND REGULATION; PROVIDING FOR DISSOLUTION, CLOSING, AND LIQUIDATION; PROVIDING FOR FEDERAL DEPOSIT INSURANCE CORPORATIONS; PROVIDING FOR REMOVAL OF DIRECTORS OR OFFICERS OF FINANCIAL INSTITUTIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND REPEALING SECTIONS 32-2-101, 32-2-102, 32-2-103, 32-2-104, 32-2-105, 32-2-106, 32-2-107, 32-2-108, 32-2-109, 32-2-110, 32-2-111, 32-2-201, 32-2-202, 32-2-203, 32-2-204, 32-2-205, 32-2-206, 32-2-207, 32-2-208, 32-2-209, 32-2-210, 32-2-211, 32-2-212, 32-2-232, 32-2-233, 32-2-241, 32-2-242, 32-2-243, 32-2-244, 32-2-245, 32-2-251, 32-2-252, 32-2-253, 32-2-254, 32-2-255, 32-2-256, 32-2-257, 32-2-261, 32-2-262, 32-2-263, 32-2-264, 32-2-271, 32-2-301, 32-2-302, 32-2-303, 32-2-304, 32-2-305, 32-2-306, 32-2-307, 32-2-308, 32-2-309, 32-2-401, 32-2-402, 32-2-403, 32-2-404, 32-2-405, 32-2-406, 32-2-407, 32-2-408, 32-2-409, 32-2-410, 32-2-411, 32-2-412, 32-2-413, 32-2-414, 32-2-415, 32-2-416, 32-2-417, 32-2-418, 32-2-420, 32-2-431, 32-2-432, 32-2-441, 32-2-442, 32-2-501, 32-2-502, AND 32-2-503, MCA.

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

**Section 1. Short title – application – purpose.** (1) [Sections 1 through 135] may be cited as the “Mutual Savings and Loan Association Act”.

(2) A corporation that has been incorporated for the purpose of encouraging home ownership and thrift and making substantially all of its loans in qualified thrift investments is known in this chapter as a state mutual association of the department, which shall enforce all laws with respect to it.

(3) [Sections 1 through 135] apply to:

- (a) all mutual associations specified in [section 2];
- (b) corporations that subject themselves to [sections 1 through 135]; and
- (c) persons, partnerships, or corporations who by violating [sections 1 through 135] become subject to the penalties provided in [sections 1 through 135].

(4) The purpose of [sections 1 through 135] is to provide the state with a sound system of state-chartered mutual associations by providing for and encouraging the development of state-chartered mutual associations while restricting their activities to the extent necessary to protect the interest of depositors. The purpose includes:

- (a) the sound conduct of the business of mutual associations;
- (b) the conservation of mutual association assets;
- (c) the maintenance of adequate reserves against deposits;
- (d) the opportunity for mutual associations to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;
- (e) the opportunity for mutual associations to serve the citizens of this state;
- (f) the opportunity for mutual associations to participate in and promote the economic progress of Montana and the United States; and
- (g) the opportunity for the management of mutual associations to exercise business judgment in conducting the affairs of their institutions.

(5) A corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans in qualified thrift investments is known as a mutual association and is under the supervision of the department, which shall enforce all laws with respect to it.

(6) The mutual associations have continual succession and must be organized under the provisions of this chapter.

(7) [Sections 1 through 135] do not restrict the activities of mutual associations for the purpose of protecting any person from competition from financial organizations and does not confer any right or cause of action on any competitor.

(8) This section constitutes the standard to be observed by the commissioner of banking and financial institutions in the exercise of authority under [sections 1 through 135] and provides guidelines in the construction and application of [sections 1 through 135].

**Section 2. General applicability.** It is unlawful for any corporation, partnership, firm, or individual to engage in or transact business as a mutual association, as defined in [section 3], except by means of a corporation organized for that purpose.

**Section 3. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Capital" means, with respect to a mutual association:
  - (a) retained earnings; or
  - (b) at the discretion of the commissioner, any other form of capital, subject to any applicable federal and state laws.
- (2) "Commissioner" means the commissioner of banking and financial institutions as provided in 32-1-211.
- (3) "Department" means the department of administration provided for in 2-15-1001.
- (4) "Deposit" has the meaning provided in 12 C.F.R. 204.2, as amended. The term includes demand deposits, which includes all deposits, the payment of which may legally be required when demanded.
- (5) "Division" means the division of banking and financial institutions of the department.
- (6) "Federal savings association" means a federal savings and loan association or a federal savings bank doing business under authority granted by the office of the comptroller of the currency or the former office of thrift supervision.
- (7) "Institution-affiliated party" means:
  - (a) any director, officer, or employee of or agent for a mutual association;
  - (b) any other person who has filed or is required to file a change-in-control notice pursuant to this chapter;
  - (c) any consultant, joint venture partner, or other person as determined by the commissioner who participates in the conduct of the affairs of an insured depository institution; and
  - (d) any independent contractor, including any attorney, appraiser, or accountant, who knowingly or recklessly participates in any violation of any law or rule, any breach of fiduciary duty, or any unsafe or unsound practice that caused or is likely to cause more than a minimal financial loss to or a significant adverse effect on the mutual association.
- (8) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.
- (9) "Member" means all holders of the mutual association's savings, demand, including other authorized members on accounts.
- (10) "Mutual association" means any corporation that has been incorporated to conduct the business of receiving money on deposit from its members and making substantially all of its loans on one-to-four family real estate mortgage security. The term includes a savings and loan association formed without authority to issue stock.
- (11) "Portfolio assets" has the same meaning as provided in 12 U.S.C. 1467a, as amended.

(12) “Qualified thrift investments” has the same meaning as provided in 12 U.S.C. 1467a, as amended.

(13) “Savings association” or “savings and loan association” means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state. “Savings association” also includes a state mutual association that elects to operate as a savings and loan association under this chapter.

(14) (a) “Service provider” means an entity that provides one or more of the following services to a mutual association:

(i) data processing services;

(ii) activities supporting financial services, including but not limited to lending, funds transfer, fiduciary activities, trading activities, and deposit taking;

(iii) internet-related services, including but not limited to web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring; and

(iv) activities related to the business of mutual associations.

(b) The term does not include:

(i) an entity that provides telecommunications service, internet access service, internet transport services, voice-over internet protocol service, or other internet protocol-enabled service; or

(ii) a general audience or communications platform.

**Section 4. Notice of violation – administrative hearing – penalties – liability.** (1) If the department has reasonable cause to believe that a person has violated this chapter, a rule promulgated under this chapter, or an order issued by the department or has made a material misrepresentation to the department by act or omission, the department may issue an administrative notice stating the alleged violation to the person.

(2) The Montana Administrative Procedure Act’s provisions for contested cases and judicial review of contested cases apply to civil violations of this chapter.

(3) Any mutual association that maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error, fails to submit or publish any report or information required by this chapter within the period of time specified by this chapter, or submits or publishes any false or misleading report or information, or inadvertently transmits or publishes any report that is minimally late is subject to a penalty of not more than \$500 for each day during which the failure continues or the false or misleading information is not corrected. The mutual association has the burden of proving by a preponderance of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

(4) Any mutual association that fails to submit or publish any report or information required within the period of time specified by this chapter or submits or publishes any false or misleading report or information in a manner not described in subsection (3) is subject to a penalty of not more than \$5,000 for each day during which the failure continues or the false or misleading information is not corrected.

(5) If any mutual association knowingly or with reckless disregard for the accuracy of any information or report described in subsection (4) submits or publishes any false or misleading report or information, the division may assess a penalty of not more than \$10,000 for each day during which the failure continues or the false or misleading information is not corrected.

(6) The department's remedies specified in this chapter are cumulative.

(7) All civil penalties collected pursuant to this section must be deposited in the special revenue account for use by the department in its supervision of mutual associations.

**Section 5. Criminal liabilities.** (1) A person who knowingly and purposefully violates any provision of this chapter or any rule or order under this chapter shall upon conviction be fined not more than \$5,000 or imprisoned not more than 10 years, or both. However, if the person has been previously convicted of a felony in any way involving financial institutions, the person shall be imprisoned for not less than 1 year.

(2) The commissioner may refer evidence that may be available concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the proper prosecuting attorney, who may in the prosecutor's discretion, with or without a reference, institute the appropriate criminal proceedings under this chapter.

(3) The provisions of this chapter do not limit the power of the state to punish any person for any conduct that constitutes a crime.

**Section 6. Examination and supervision by department -- duties -- rulemaking.** (1) The department shall:

(a) exercise constant supervision over the books and affairs of all mutual associations doing business in this state; and

(b) investigate the methods of operation and conduct of business of the mutual associations and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound principles of mutual associations.

(2) Except as provided in subsection (3), the department shall:

(a) examine, at least once every 24 months, each mutual association and verify the assets and liabilities of each and investigate the character and value of the assets of each to ascertain with reasonable certainty that the values are correctly carried on the books; and

(b) submit in writing to the examined mutual association a report of the examination's findings no later than 60 days after the completion of the examination.

(3) The department may accept as the examination required by subsection (2) the findings or results of an examination of a mutual association that was made by a federal or state regulatory agency or insuring agency of the United States authorized to make the examination.

(4) Whenever a mutual association is subject to examination by the department that causes any of the services listed for a service provider in [section 3] to be performed by itself, by contract or otherwise, the performance is subject to regulation and examination by the department to the same extent as if the services were performed by the mutual association itself.

(5) The department may:

(a) enter into joint examination or joint enforcement actions with other regulatory agencies having concurrent jurisdiction over a mutual association or service provider;

(b) enter into agreements with any depository institution regulatory agency that has concurrent jurisdiction over a mutual association or service provider to:

(i) engage the services of the agency's examiners at a reasonable rate of compensation; or

(ii) provide the services of the department's examiners to the agency at a reasonable rate of compensation; and

(c) disclose to a mutual association information about a service provider of the mutual association.

(6) The department may in the performance of its official enforcement duties:

(a) examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a mutual association regarding the affairs and business of the mutual association; and

(b) issue subpoenas and administer oaths.

(7) In the case of a refusal to obey a subpoena issued by the department, the refusal may be reported to the district court of the district in which the mutual association is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(8) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(9) All officers, directors, agents, and employees of mutual associations doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a mutual association shall:

(a) at all times afford reasonable facilities for examinations;

(b) provide responses and reports to the department as required by the department;

(c) attend hearings and answer under oath the department's inquiries;

(d) produce and exhibit any books, accounts, documents, and property the department desires to inspect; and

(e) in all things aid the department in the performance of its duties.

(10) The provisions of 32-1-212 apply to this chapter.

(11) The department may adopt rules to implement this section.

**Section 7. Payments by mutual associations.** Each mutual association under the supervision of the department shall pay to the department fees set by the department by rule to recover all of the costs of administering the program for supervision of mutual associations. The department may amend the rule setting the fees on or before June 1 and December 1 of each year. The funds collected must be deposited in the state special revenue fund for the use of the department in its supervision of mutual associations.

**Section 8. Examination – request of directors.** If requested in writing, upon the authority of a majority of the board of directors of any mutual association to make an examination of the mutual association, the department shall do so.

**Section 9. Department rulemaking.** (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state mutual associations, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of mutual associations and prescribe the form in which mutual associations report their assets, liabilities, and reserves.

(3) The department may promulgate reasonable rules concerning applications for and determinations on applications for the formation, relocation, closure, and sale of branch mutual associations.

(4) The department may adopt rules, issue orders and declaratory statements, disseminate information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter.

**Section 10. Reliance on order – limit on liability.** (1) A person acting in good faith reliance on a rule, order, or declaratory statement issued by the

division is not subject to any criminal, civil, or administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates the rule, order, or declaratory statement.

(2) In the case of an order or declaratory statement that is not of general application, only the person to whom the order or declaratory statement was issued is entitled to rely on it unless a third person is dealing with material facts or circumstances that are substantially the same as those on which the order or declaratory statement was based.

**Section 11. Reports to department.** (1) A mutual association shall make to the department regular call reports at least four times each year according to the form that may be prescribed by the department, verified by oath or affirmation of the president, vice president, or cashier of the mutual association, and attested by the signature of at least two of the directors other than the subscribing officer.

(2) Each call report must exhibit in detail and under appropriate schedules the resources and liabilities of the mutual association at the close of business on any past day specified by the department. The past day specified by the department, under the provisions of this section, must be the day designated by the comptroller of the currency of the United States for reports of national banking associations.

(3) The call report must be transmitted to the department within 30 days after the past day specified under subsection (2). A mutual association's successful and timely electronic transmittal of its call report to the applicable federal regulatory authority satisfies the mutual association's obligation to transmit the report to the department. The original signature page of the mutual association's call report that complies with subsection (1) must be permanently retained by the mutual association and available for the department's review.

**Section 12. Special reports to department.** In addition to the information obtained from the call report required by [section 11], the department may also require a mutual association to furnish a special report in writing, verified as required by [section 11], if in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the mutual association.

**Section 13. Confidentiality – penalties.** (1) (a) Reports and statement under [sections 6, 8, and 12] are confidential. Except for information made public by the federal deposit insurance corporation or another federal mutual association authority's publicly accessible website, any information contained in the reports and statements is confidential. Except as provided in subsection (1)(b), confidential information may not be disclosed to persons who are not officially associated with the department and must be used by the department only to further its official duties.

(b) The department may exchange information with federal financial institution regulatory agencies and with the financial regulatory departments of other states. The department may furnish reports of its examination findings under [sections 6 and 8] to a federal home loan bank, as defined in the Federal Home Loan Bank Act of 1932, 12 U.S.C. 1422. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be disclosed to any person not officially associated with the department. The information must be used by the department only to further its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a mutual association must be removed from office and is guilty of a felony. Upon conviction, the person shall be fined an amount not exceeding \$1,000, be imprisoned in a state correctional facility for a term not exceeding 5 years, or both.

**Section 14. Prohibited practices.** (1) It is unlawful for any person to knowingly and purposefully:

(a) make any material false statement of facts, statement of accounts, or report to the department; or

(b) make any false entries in the books of the mutual association.

(2) It is unlawful for any person to knowingly exhibit false documents with the intent to deceive any person authorized to examine a mutual association.

(3) Violations of this section are punishable as provided in [section 5].

**Section 15. Loan production office – rulemaking.** (1) A mutual association may:

(a) establish and maintain a loan production office only after giving notice to the department; or

(b) relocate or close a loan production office after giving notice to its customers and the department.

(2) The department may adopt rules to implement this section.

**Section 16. Formation.** (1) Five or more individuals who are residents of this state may, with the approval of the commissioner, incorporate a mutual association.

(2) The persons proposing to incorporate a mutual association shall apply for approval to incorporate by submitting the application in a form prescribed by the commissioner, which must be under oath and include all of the following plus any additional information that the department may require by rule as necessary or appropriate in the particular instance for the protection of depositors, borrowers, or members and the public interest:

(a) the proposed articles of incorporation and bylaws set forth in [sections 20 through 22];

(b) an application for reservation of a name in accordance with 35-14-402, if reservation is desired by the incorporators and has not been previously filed; and

(c) information to demonstrate the proposed mutual association will satisfy the following requirements:

(i) a persuasive showing that there is a reasonable public necessity and demand for a new mutual association at the proposed location;

(ii) that the mutual association will be managed by persons of good moral character and financial integrity who have sufficient management experience to ensure that the mutual association will be operated safely and soundly;

(iii) a persuasive showing that the new mutual association will have sufficient volume of business to ensure solvency and that establishment of the new mutual association organized under the laws of this state will be in the public interest;

(iv) the proposed minimum amount of initial capital contribution to be deposited, which must be set by the commissioner;

(v) an application fee, which must be set by the department by rule; and

(vi) Any other information the commissioner requires by rule or in a specific application.

**Section 17. Notice of acceptance of application.** If the department determines that a completed application has been received, it shall issue a notice of acceptance of application to the applicant.

**Section 18. Notice of proposed incorporation.** (1) (a) Within 10 days after receipt from the department of a notice of acceptance of an application, the applicant shall publish notice of the proposed incorporation in a newspaper of general circulation in the county where the mutual association's initial main office is to be located. The applicant shall publish the notice once a week for 2 weeks and furnish a certified copy of the affidavit of publication to the department.

(b) The notice shall specify the name of the proposed mutual association, its location, the amount of the proposed capital, the names of the incorporators, the address of the commissioner, and the date by which comments on the application must be filed with the commissioner, which is 30 days after the date of the first publication of the notice.

(2) If any comments on the application are filed with the commissioner within the 30-day period prescribed in subsection (1), the commissioner shall determine whether the comments are relevant to the requirements for incorporation of the mutual association and, if so, investigate the comments in the manner the commissioner considers appropriate.

**Section 19. Department investigation.** (1) The department may gather all available information relative to an application. The department may also make, or cause to be made, any investigations of any individual associated with the applicant as may be warranted under the circumstances, including a full background check and credit check.

(2) The department may use any administrative procedure necessary, including the taking of depositions, discovery, subpoenas, and the production of documents, to investigate an application. The Montana Administrative Procedure Act applies.

**Section 20. Articles of incorporation.** (1) A mutual association's articles of incorporation must contain the following:

- (a) the information required by 35-14-202(1);
- (b) the name of the city or town and county within the state in which the principal office of the corporation is to be located;
- (c) the names and business addresses of the initial incorporators;
- (d) the number of the board of directors and the names of those agreed on for the first year; and
- (e) the purpose for which the mutual association is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) A mutual association may not adopt or use the name of any other mutual association, and the corporation name must comply with 35-14-401(2) through (4) and 32-1-402.

(3) A mutual association may not be organized or incorporated until the articles of incorporation have been reviewed and approved by the department and until the mutual association has obtained a certificate from the department authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(4) A mutual association may not amend or restate its articles of incorporation until its articles of amendment or restatement have been reviewed and approved by the department. A mutual association shall make a true copy of its articles of incorporation and bylaws and all related amendments available to account holders at all times in each office of the mutual association and shall on request and payment of a reasonable copying fee deliver to any account holders a copy of the articles of incorporation and bylaws and related amendments.

**Section 21. Incorporation.** The proposed articles of incorporation must be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

**Section 22. Bylaws.** (1) The bylaws must be in conformity with the provisions of this chapter and must be open to inspection by the members at the principal place of business during regular business hours.

(2) The bylaws, among other things, must provide for:

(a) the character and method of conducting the business of the mutual association, with rules governing the addition of members and the amount of the membership fee;

(b) the annual meeting of the members;

(c) the annual election and qualification of directors and the term or period during which the directors shall serve;

(d) the appointment of officers;

(e) the adoption, ratification, and amendment of the bylaws, which may be made either by the members or by the board of directors;

(f) the method of voting at the annual meeting; and

(g) the periodic investigation of the business and condition of the mutual association.

(3) The bylaws and any change or amendment of the bylaws are not effective until first reviewed and approved by the department, and a mutual association may not commence the transaction of business until after the bylaws have been reviewed and approved by the department.

**Section 23. Capital.** (1) The capital of a mutual association must be an amount determined by the commissioner based on the amount and character of the anticipated business of the mutual association and the safety of prospective depositors.

(2) As used in this section, "capital" means the initial funding required to organize a mutual association.

**Section 24. Review of application.** (1) The commissioner shall examine all of the facts connected with the application to determine if all of the requirements of law are met, including but not limited to the following:

(a) the proposed articles of incorporation and bylaws, application for reservation of name, applicable fees, and other items required meet the requirements of this chapter;

(b) the population and economic characteristics of the area to be served afford reasonable promise of adequate support for the proposed mutual association;

(c) the competence, experience, character and fitness, financial resources, and integrity of the proposed directors and officers are to command the confidence of the community and warrant the belief that the business of the proposed mutual association will be honestly and efficiently conducted;

(d) the capital of the proposed mutual association is adequate in relation to the amount and character of the anticipated business of the association and the safety of prospective depositors;

(e) the commissioner is satisfied, based on the investigation conducted pursuant to [section 19] and any other facts within the knowledge of the commissioner, that the mutual association is otherwise entitled to commence business; and

(f) the commissioner has received from the federal deposit insurance corporation written confirmation that it has approved the mutual association's application to become an insured state savings association as defined in section

3(h) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(h), as amended, or the mutual association has received satisfactory assurance from the federal deposit insurance corporation that the proposed mutual association will be accepted for insurance if the incorporators comply with certain slated minor requirements imposed by the federal deposit insurance corporation. The minor requirements must be of a type and character that the commissioner determines can be promptly complied with by the incorporators without serious difficulties.

(2) Within 180 days following the date of acceptance of the application, the commissioner shall approve or disapprove the application of the proposed mutual association on the basis of the examination. In giving approval, the commissioner may impose conditions to be met prior to the issuance of a certificate of authority to commence business under this chapter.

(3) If the commissioner approves the application, the commissioner shall notify the applicant of the approval and proceed with the steps to complete the application.

(4) If the commissioner denies the application, the denial must be in writing in the form of findings of fact and conclusions of law and order. The applicant may file an administrative appeal pursuant to the Montana Administrative Procedure Act.

(5) The findings and order may not be disclosed to any other party and may not be subject to public disclosure under [section 13] unless the findings of fact and the conclusions of law and order are appealed pursuant to the Montana Administrative Procedure Act.

**Section 25. Certificate of authority to commence business.** (1) A mutual association organized under this chapter may not accept deposits, incur indebtedness, or transact any business other than business that is incidental to its organization until it receives a certificate of authority to commence business issued by the commissioner.

(2) A mutual association organized under this chapter may not commence business until the capital required in its permission to organize has been deposited to the credit of the financial institution in a depository designated by the directors. When the required capital is deposited, a complete list of the capital depositors, with the name, address, occupation, and amount of capital deposited by each, must be filed with the commissioner, and the list must be verified by the president and secretary of the mutual association.

(3) When the mutual association has completed all steps necessary to begin business, the association shall file a report with the commissioner certifying that it has done everything required by the commissioner before it can be authorized to commence business.

(4) Upon receipt of the report referred to in subsection (3), the commissioner shall examine the affairs of the mutual association and determine whether the mutual association has complied with all of the requirements necessary to entitle it to engage in business.

(5) All transactions conducted by a person in violation of this section are void.

**Section 26. Failure to commence business.** (1) Any mutual association that fails to commence business as a financial institution within 1 year after receiving a certificate of authorization forfeits that certificate and shall cease all activities. The commissioner shall certify to the secretary of state that the certificate of authority has been forfeited so that the mutual association's articles of incorporation may be terminated by the secretary of state.

(2) On forfeiture, the contributors of initial capital deposits of the mutual association are entitled to the return of any amounts they have paid to the

institution, and all expenses incurred in the organization must be borne by the original organizers who were named in the application for permission to organize.

**Section 27. Conversion from federal mutual savings and loan association – state mutual savings and loan association.** (1) Any federal mutual savings and loan association organized and existing under the laws and regulations of the United States and duly authorized to operate and actually operating in Montana may convert into a Montana mutual savings and loan association operating under the provisions of this chapter, with the same force and effect as though originally incorporated under the provisions of this chapter, by complying with the rules and regulations of the federal regulatory authority and also by following the procedure set forth in subsection (2).

(2) (a) The federal mutual association shall submit a plan of conversion to the commissioner. When the plan, either with or without amendment, has been approved by the commissioner, it must be submitted to the members of the mutual association as provided in subsection (2)(b).

(b) A meeting of the members must be held on not less than 30 days' notice to each member. Notice of the meeting must be mailed to each member, postage prepaid, to the last-known address of the member shown on the books of the mutual association.

(c) At the meeting of the members of the mutual association, the members may by affirmative vote of a majority of members present, in person or by proxy, resolve to convert the federal mutual association to a state mutual association. A copy of the minutes of the meeting of the members, certified by an appropriate officer of the mutual association, must be filed with the commissioner, accompanied by a conversion fee, which must be set by the department by rule.

(d) Within 30 days after the approval of the proceedings by the commissioner, the mutual association shall file with the commissioner a copy of the proposed articles of incorporation and proposed bylaws of the mutual association. The proposed articles of incorporation and bylaws must conform to the provisions of the laws of this state.

(e) Upon receipt of the proposed articles of incorporation and bylaws, the commissioner shall make a careful examination and investigation of the facts connected with the conversion of the mutual association, including an examination of its affairs generally and a determination of its assets and liabilities. If it appears that the mutual association, if converted, would lawfully be entitled to conduct business as a state mutual association pursuant to the provisions of this chapter, the commissioner shall issue a final approval to the mutual association.

(f) The mutual association shall finalize the articles of incorporation and bylaws and, upon payment of the filing fees by the mutual association, the division shall file the certificate of authority and articles of incorporation with the secretary of state. Upon issuance and recordation of the certificate of authority and articles of incorporation, the mutual association shall file them with the appropriate federal regulatory authority. Upon the filing, the mutual association ceases to be a federal association and is converted to a state mutual association.

(g) (i) Upon conversion, all of the property of the federal mutual association, including all of its rights, title, and interest in and to all property of any kind whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or that would inure to it, must immediately by act of law and without any conveyance or transfer and without any further act

or deed be vested in and become the property of the state mutual association, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same was possessed, held, or enjoyed by the federal savings association.

(ii) The state mutual association is deemed to be a continuation of the entity and the identity of the federal mutual association, operating under and pursuant to the provisions of this chapter, and all rights, obligations, and relations of the federal savings association to or in respect to any person, estate, or creditor, depositor, trustee, or beneficiary of any trust, and to or in respect to any executorship or trusteeship or other trust or fiduciary function, must remain unimpaired. The state mutual association shall by operation of this section succeed to all the rights, obligations, relations, and trusts, and the associated duties and liabilities, and shall execute and perform each and every right, obligation, trust, and relation in the same manner as if the state mutual association had itself assumed the trust or relation, including the related obligations and liabilities.

**Section 28. Conversion into federal savings and loan association.**

(1) Any mutual association eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure in subsection (2).

(2) (a) At any regular meeting or special meeting of the members of the mutual association called to consider the action and held in accordance with the laws governing the mutual association, the members, by an affirmative vote of the majority, in person or by proxy, may declare by resolution the determination to convert the state mutual association into a federal savings and loan association.

(b) A copy of the minutes of the meeting of the members verified by the affidavit of the president or vice president and the secretary of the meeting must be filed with the department within 10 days after the meeting. The verified copy of the minutes of the meeting when filed is presumptive evidence of the holding of and action of the meeting.

(c) Within a reasonable time and without any unnecessary delay after the adjournment of the meeting of the members, the mutual association shall take any action necessary to make it a federal savings and loan association. Within 10 days after receipt of the federal charter, the charter must be filed with the department. Upon filing, the mutual association ceases to be a state mutual association and is thereafter a federal savings and loan association.

**Section 29. Requirements of state mutual association.** A mutual association must have its qualified thrift investments:

(1) equal or exceed 50% of its portfolio assets; and

(2) continue to equal or exceed 50% of its assets on a monthly average basis in 9 out of every 12 months.

**Section 30. Directors – meetings – officers.** (1) Within 30 days after the corporate existence of a mutual association begins, the directors of the mutual association shall hold an organizational meeting and shall elect officers pursuant to the provisions of this chapter and the bylaws of the mutual association. At the organizational meeting, the directors shall take other action that is appropriate for beginning the transaction of business by the mutual association. The department may extend, by order, the time within which the organizational meeting must be held.

(2) The incorporators of the mutual association shall serve as directors until the first meeting of the members to be held at the time provided for by this chapter or until their successors are elected and qualified, after which the directors will be elected by the members of the mutual association in

accordance with the provisions of this chapter and the bylaws of the mutual association.

(3) The directors, unless otherwise provided by the bylaws of the mutual association, shall elect or appoint all officers of the mutual association. The directors, when appointed or elected, shall file with the department their oath of office, as provided in election or appointment of mutual association directors. Meetings of the board of directors must be held at least once each month.

**Section 31. Board of directors – qualifications, tenure, and vacancies.** (1) The affairs of the mutual association must be managed by a board of directors consisting of no fewer than three persons. At least two-thirds of the board must be residents of this state. Directors need not be members of the corporation unless required by the articles of incorporation or bylaws. A person who has been convicted of a felony may not be elected a director.

(2) (a) The directors must be elected for a term of 1 year at the annual meeting of the members. The annual meeting must be held before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation is not dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons elected will hold their office until successors are elected and qualified.

(b) Every director shall take and subscribe an oath that the director will diligently and honestly perform the director's duty in the office and that the director will not knowingly violate or permit a violation of any of the provisions of this chapter. The oaths must be made in duplicate. One copy must be transmitted to and filed with the department, and one copy must be kept on file in the office of the mutual association.

**Section 32. Selection of officers and employees – minutes of meetings.** (1) The board of directors of a mutual association shall hold a meeting at least quarterly.

(2) The board of directors may elect a president, one or more vice presidents, a cashier, one or more assistant cashiers, and other officers and employees that the board may from time to time consider to be in the best interest of the mutual association, and the board shall fix their compensation. The president must be chosen from the board of directors.

(3) (a) The board of directors shall keep a correct report of the meetings of the board and of the members. This record of the meetings of the board of directors must be signed, manually or electronically, by the presiding officer and the person responsible for preparing the minutes.

(b) The minutes must be read and approved at the following meeting of the board of directors, and the minutes of the following meeting must show that fact.

(c) A person who makes a material false entry in the record of the board meetings or who makes a material change or alteration of an entry made in the record is subject to removal pursuant to [section 73].

**Section 33. Members – proxies.** (1) A depositor of a mutual association is a voting member and has an ownership interest in the mutual association as may be provided in the terms and conditions set forth in the articles of incorporation and bylaws of the mutual association.

(2) The bylaws of a mutual association may provide that all borrowers from the mutual association are members and, if so, must provide for their rights and privileges.

(3) Unless otherwise provided in the articles of incorporation or bylaws, a proxy granted by a depositor to the officers and directors of a mutual association expires on the date specified in the proxy. If no date is specified, the authority granted by the proxy is perpetual.

(4) The written proxy appointment is separate and distinct from any deposit agreement, any loan agreement, or any other agreement, statement, document, or disclosure provided by a mutual association to a depositor.

(5) At least once every year, the board of directors of a mutual association shall, by resolution, cause the secretary of the mutual association to mail to every member of the mutual association a blank form of proxy, and the member may withdraw a former proxy and substitute a new proxy for the former proxy. A proxy continues in force and is binding on the member until the proxy is revoked or another proxy is substituted.

**Section 34. Right of examination by member.** A member of a mutual association incorporated under the laws of this state who is not a director may not inspect the books and records of the mutual association showing its transactions with a customer. A member may inspect the books and records of the mutual association as provided in 35-14-1602.

**Section 35. Federal savings association powers extended to state mutual associations.** (1) A mutual association organized under the laws of this state may engage in any activity or business in which the mutual association could engage if it were operating as a federal savings association if the power or activity is not expressly prohibited or limited by the laws of this state and:

(a) if the power or activity is clearly authorized to federal savings associations by federal statute, regulations, or interpretive ruling issued or adopted by a federal banking regulator having jurisdiction over federal savings associations; and

(b) upon application to and approval by the department.

(2) The department may adopt rules to govern the application procedure under this section. The department shall act on an application under this section within 15 days after receipt of the application. The department may, for good cause, extend the time period for processing an application under this section for an additional 15 days. If the department fails to act on the application within 15 days after receipt of the application and does not extend the time period for good cause, the state mutual association may engage in the activity requested without the approval of the department.

**Section 36. Surrender of charter by state mutual association.**

(1) Any mutual association that will become a corporation for carrying on the business of a mutual association under the laws of the United States ceases to be a corporation under the laws of this state.

(2) The members of the board of directors last in office when the corporation became a corporation under the laws of the United States continues to be the board of directors of the corporation, with power to take all necessary measures to carry out and perfect the organization by signing the articles of association and the organization certificate and adopting the regulations as may be just and proper and not inconsistent with the acts of congress.

(3) A change from a state mutual association to a federal savings association may not release the mutual association from its obligations to pay and discharge all of the liabilities created by law or incurred by the mutual association before becoming a federal savings association or any tax imposed by the laws of this state up to the date of the mutual association becoming a federal savings association, in proportion to the time that has elapsed since the next preceding payment.

**Section 37. Membership in federal home loan bank.** (1) A mutual association may be a member of the federal home loan bank of this federal reserve banking district as far as may be compatible with the constitution of this state and the laws of the United States.

(2) The department, on request of any federal home loan bank, shall furnish that bank any information it may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to a mutual association that is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from a federal home loan bank.

**Section 38. Merger of mutual associations.** (1) (a) Any mutual association doing business in this state that has been in business for at least 5 years may, with the approval of the department if any merger party is a mutual association organized under the laws of this state, merge into one mutual association on terms and conditions lawfully agreed on by a majority of the board of directors of each mutual association proposing to merge.

(b) Except as otherwise expressly provided in this chapter, a merger under this subsection (1) is governed by Title 35, chapter 1, if the resulting mutual association is organized under the laws of this state.

(2) Upon merger:

(a) each mutual association merging party merges into the resulting mutual association and the separate existence of every merging party except the resulting mutual association ceases;

(b) title to all real, personal, and mixed property owned by each merging party is vested in the resulting mutual association without reversion or impairment and without the necessity of any instrument of transfer;

(c) the resulting mutual association has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(d) the resulting mutual association has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the will or other investment.

(3) Upon merger, the resulting mutual association shall designate and operate one of the prior main offices of the merging mutual associations as its main mutual association office and the resulting mutual association may maintain and continue to operate the main office of each of the other merging mutual associations as a branch.

(4) (a) Upon merger, the resulting mutual association may:

(i) maintain the branches and other offices previously maintained by the merging mutual associations; and

(ii) establish, acquire, or operate additional branches of mutual associations at any location where any mutual association involved in the merger could have established, acquired, or operated a branch under applicable federal or state law if that mutual association had not been a party to the merger.

(b) A resulting mutual association organized under the laws of this state that intends to establish, acquire, or operate a branch under subsection (4)(a)(ii) must receive prior approval from the department as provided for in [section 39], whether or not the branch is to be located within or outside this state.

**Section 39. Branches.** (1) A mutual association may establish and maintain branches as provided in [section 38] and this section. The formation and operation of a branch in this state by a mutual association organized under the laws of this state require the prior approval of the department. A mutual association organized under the laws of this state may establish, acquire, or operate a branch or loan production office outside of this state if approved by the department and if permitted by the laws of the jurisdiction where the branch or office is to be located.

(2) A branch may offer all services and conduct all business authorized to be offered or conducted by the mutual association.

(3) A mutual association authorized to do mutual association business in this state may use a satellite terminal, as defined in 32-6-103, at any location permitted by the Montana Electronic Funds Transfer Act.

(4) A mutual association located in this state may provide services for other mutual associations located in this state, whether or not those mutual associations are affiliates.

(5) With the prior approval of the appropriate federal regulator and state chartering authority, a mutual association that is not organized under the laws of this state may establish and operate a de novo branch in this state under the same terms that would apply to a mutual association organized under the laws of this state seeking approval from the department to establish and operate a de novo branch in this state.

**Section 40. Sale of branch.** Any mutual association may, with the approval of the department, buy from or sell to another mutual association, regardless of where either mutual association is located or doing business, all or substantially all of the business, assets, and liabilities of the selling mutual association's branch or branches that are physically located in this state.

**Section 41. Agreement of purchase and sale.** (1) The selling and purchasing mutual associations shall enter into an agreement that must contain:

- (a) all of the terms and conditions of the sale;
- (b) proper provision for the assumption, payment, transfer, or retention of all of the liabilities of the selling mutual association as to the branch assets and business sold; and
- (c) proper provision for the assumption, payment, transfer, or retention of the purchasing mutual association of all fiduciary obligations of the branch or branch business sold.

(2) The agreement for purchase and sale of a state mutual association must be authorized and approved by the department. The agreement of purchase and sale of a national savings association must be in accordance with the laws applicable to national savings associations.

**Section 42. Mutual association advertising before issuance of charter.** It is unlawful for any individual, firm, or corporation to advertise, publish, or otherwise promulgate that it is engaged in the mutual association business without first having obtained authority from the department. Any person who violates this section is subject to the penalties in [section 4(5)].

**Section 43. Prohibitions on advertising as mutual association -- trade names restricted.** (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to the department and that has not received a certificate to do business as a mutual association from the department may not:

(a) except as for a student financial institution, as defined in 32-1-115, advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notes or certificates of deposit; or

(b) use an office sign at the place where the business is transacted that has on it an artificial or corporate name or other words indicating that:

- (i) the place or office is the place or office of a mutual association;
- (ii) deposits are received there or payments made on checks; or
- (iii) any other form of mutual association business is transacted there.

(2) The person, firm, company, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other words indicating that the business is the business of a mutual association.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in this state may not solicit or receive deposits or transact business in the manner of a mutual association or in a manner that leads the public to believe that its business is that of a mutual association.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, except for a student financial institution, as defined in 32-1-115, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to the department and that has not received from the department a certificate to do a mutual association business may not transact business under a name or title that contains the words "mutual savings and loan association", "savings and loan association", "savings and loan", "mutual association", "mutual savings association", "building and loan", or "building and loan association", unless the department has granted a waiver.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$500 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner that leads the public to believe that its business is that of a mutual association and may enter any other order or decree as equity and justice require.

#### **Section 44. Penalty for transacting business without certificate.**

(1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notes or certificates of deposit for them or advertising that the person or entity is transacting the business of a mutual association or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a mutual association, or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, with or without interest, are being issued or that any other form of mutual association business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a mutual association, must have the proper capital set aside for the purpose of transacting that business and must have received from the department, as provided in this chapter, a certificate to do a mutual association business.

(2) A person who violates any provision of this section is subject to the penalties set forth in [section 4(5)].

(3) Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equality and justice require.

(4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the business defined in this section shall transact that business according to the provisions of [sections 1 through 135], and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section.

**Section 45. Building and loan associations – powers and duties.**

(1) A mutual association may:

(a) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision of the federal government or this state;

(b) sue and be sued, complain, and defend in any court of law or equity;

(c) have a corporate seal, affixed by imprint, facsimile, or otherwise;

(d) appoint officers and agents as its business requires and allow them suitable compensation;

(e) adopt bylaws not inconsistent with the laws of Montana and the rules adopted under the laws of Montana;

(f) raise capital, which must be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by statute and rule, and the holders of the accounts or other accounts must, to the extent as may be provided by such rules and regulations, be members of the association and must have the voting rights and other rights as are provided;

(g) issue notes, bonds, debentures or other obligations, or securities, provided by or under any provision of state statute as from time to time is in effect;

(h) provide for redemption of insured accounts;

(i) borrow money without limitation and pledge and otherwise encumber any of its assets to secure its debts;

(j) lend and otherwise invest its funds as authorized by statute and rules;

(k) wind up and dissolve, merge, consolidate, convert, or reorganize;

(l) purchase, hold, and convey real estate and personal property consistent with its objectives, purposes, and powers;

(m) mortgage or lease any real estate and personal property and take the property by gift, devise, or bequest; and

(n) exercise all powers conferred by law.

(2) In addition to the powers listed in subsection (1), the mutual association may have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers.

**Section 46. Extent that assets may be pledged.** No mutual association, mutual association employee, or mutual association officer, except as otherwise authorized by law, may pledge or hypothecate as collateral security for money borrowed its assets in a ratio exceeding 1 1/2 times the amount borrowed, except as otherwise authorized in writing by the department.

**Section 47. Issuance of capital certificates.** A mutual association may issue mutual capital certificates as allowed by federal law.

**Section 48. No certificate of deposit to be issued for borrowed money.** A mutual association may not issue its certificate of deposit for the purpose of borrowing money or make partial payments on any certificate of deposit.

**Section 49. Investments of financial institutions.** (1) Notwithstanding other provisions of the law, it is lawful for a mutual association operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in:

(a) debentures issued by the federal housing administrator and in obligations of national mortgage associations; and

(b) United States government obligations, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 through 80a-64, as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(2) The department shall publish a list of the permissible type of investments in United States government obligations as provided in subsection (1).

**Section 50. Insurance activities – exemption – rulemaking.** (1) A mutual association may:

(a) except for title insurance, sell insurance of all types, including annuities, credit life insurance, and disability insurance; and

(b) act as an insurance producer, adjuster, consultant, or administrator as defined in Title 33, chapter 17.

(2) A mutual association that engages in insurance activities authorized in subsection (1) is subject to the provisions of Title 33.

(3) A mutual association may, upon application to and approval by the department pursuant to [section 35], offer debt cancellation and suspension programs. Debt cancellation or suspension programs offered pursuant to this subsection are not insurance products subject to the provisions of Title 33. The department shall adopt rules to implement this subsection that must be substantially equivalent to or more stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or suspension programs offered by federal savings associations.

**Section 51. Authority of state mutual associations to make real estate loans – borrower insurance requirements.** (1) A state mutual association has the same authority to make loans on real estate that is given by acts of congress or the federal reserve system to federal savings associations.

(2) A mutual association 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 52. Investment in certain securities – rulemaking.** (1) A mutual association may purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures, as provided in rules adopted by the department. In addition, unless limited by the department by rule, a mutual association may purchase, sell, underwrite, and hold those investment securities that are derivative transactions that federal savings associations are expressly authorized to purchase, sell, underwrite, and hold. A mutual association may hold without limit investment securities that are general obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, or general obligations of any state.

(2) The department may adopt rules to implement this section.

**Section 53. Mutual associations authorized to obtain insurance and make loans when approved by federal housing administrator.** Notwithstanding any other provisions of the law of this state restricting the amount of any loan in relation to the value of the real estate or restricting the term of any such loan or restricting the rate of such loan, it is lawful for any mutual association that has been approved as a mortgagee by the federal housing administrator to obtain insurance and to make loans secured by real estate as the federal housing administrator insures or makes a commitment to insure.

**Section 54. Federal housing securities eligible collateral.** If collateral must or may be furnished by any state mutual association as security for the deposit of any funds and the collateral must or may be deposited with any official of the state pursuant to state law, mortgages insured and debentures issued by the federal housing administrator are considered eligible collateral for these purposes.

**Section 55. Acceptance and issuance of drafts – rulemaking.** (1) A mutual association organized and existing under state law may accept for payment at a future date drafts drawn on it by its customers authorizing the holders of the drafts to draw drafts on it or its correspondents at sight or on time of the total amount of drafts accepted for any one person, firm, or corporation that does not at any one time exceed 20% of the capital of the accepting or issuing financial institution.

(2) The department may adopt rules to implement this section.

**Section 56. Mutual association's responsibility to provide notice when funds become available for withdrawal.** (1) A mutual association shall provide clear and conspicuous written notice of the time periods and exceptions to the periods concerning when funds become available for withdrawal as of right on deposit by check or similar instrument in the customer's deposit account. The notice must state the cutoff hour, if any, fixed by the mutual association after which an item is treated as being received at the opening of the next business day.

(2) This notice must be:

(a) provided to a potential customer prior to opening a deposit account; and

(b) posted in a conspicuous manner at each financial institution, automated teller machine location, and other device that accepts deposits.

(3) A deposit slip, envelope, or any other printed form furnished by the mutual association for use in connection with deposits must contain the following notice, printed in a conspicuous manner: "Your deposit may not be available for immediate withdrawal. Consult posted notices for further information."

**Section 57. Certified checks.** (1) Whenever a check drawn on a mutual association is certified by any officer or employee of the mutual association, the amount of the check must be immediately charged against the account of the person, firm, or corporation drawing the check.

(2) It is unlawful for an officer or employee of a mutual association to certify a check drawn on the mutual association, unless at the time the check is certified the person, firm, or corporation drawing the check has on deposit with the mutual association an amount of money subject to the payment of the check equal to the amount specified in the check.

(3) An officer or employee who willfully violates the provisions of this section, reports to any device, or receives any fictitious obligation, directly or indirectly, in order to evade the provisions of this section is subject to the penalties set forth in [section 4(5)].

**Section 58. Deposit in name of minor.** Whenever a deposit is made in a mutual association by or in the name of a minor, the deposit must be held for the exclusive right and benefit of the minor and free from the control or lien of all other persons, except creditors, and must be paid, with any interest due, to the person in whose name the deposit was made. The receipt of the minor is a sufficient release or discharge for the deposit to the mutual association.

**Section 59. Demand or time deposits.** Demand deposits, within the meaning of this chapter, comprise all deposits payable within 7 days and all savings accounts and certificates of deposit that are subject to not less than 7 days' notice before payment.

**Section 60. Safe deposit department.** A mutual association may conduct a safe deposit department. The liability of any mutual association for the safekeeping and protection of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at the time of the rental. However, the obligation of the mutual association is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.

**Section 61. Giving security for deposit prohibited – exceptions.** (1) It is unlawful for a mutual association to pledge, mortgage, or hypothecate to a depositor any of its real or personal property as security for a deposit, and any pledge, mortgage, or hypothecation made in violation of this section is unenforceable.

(2) This section does not apply to deposits of the money of the United States, public funds deposited in accordance with the provision of a depository act of this state or the United States, or bankruptcy estate funds or deposits, including deposits of receivers or trustees in bankruptcy, deposited under the discretion and supervision of a court of record of Montana or of the United States.

**Section 62. Payments to foreign administrator.** A mutual association doing business in this state may pay any money remaining to the credit of a deceased depositor or deliver any personal property in its possession belonging to the deceased depositor to an administrator or executor of the depositor duly appointed and qualified in another state, provided that no demand has been previously made by an administrator or executor appointed in any county of this state and the payment discharges the mutual association to make the same from its liability on account of the deposit.

**Section 63. Calculation of profits.** Interest or commissions unpaid, although due or accrued, on debts owing to any mutual association may not be included in calculation of its profits, unless the mutual association keeps its books on a complete accrual basis. A mutual association that keeps its books on a complete accrual basis shall show on its books accrued interest receivable on notes, bonds, and other investments, unless the accrued interest is past due, and shall carry on its books accrued interest, taxes, and expenses payable.

**Section 64. Past-due and doubtful paper.** A savings association carrying any bad debt or a debt of doubtful value as an asset shall, upon the request or demand of the department, collect the debt, put in in good bankable condition, or charge it out of its books.

**Section 65. Reserve requirements.** (1) A mutual association shall maintain at all times a reserve of that percentage of its deposit liabilities as required by the appropriate federal regulator.

(2) The department may establish reserve requirements if the federal regulator discontinues reserve requirements.

(3) A mutual association whose reserve drops below the legal requirements shall report the matter to the department immediately and as often as the department asks for a report.

(4) When the reserve of a mutual association falls below the legal requirements, the mutual association may not increase its loans or discounts except by discounting or purchasing bill of exchange payable at sight or on demand, and the department shall notify a mutual association whose reserve is below the amount required to make good the reserve.

(5) In arriving at deposit liabilities with regard to mutual association deposits, the net balance of amounts due to and from other financial institutions must be used as the basis for ascertaining the deposit liability to mutual associations against which reserves are carried.

**Section 66. Limitations on loans -- rulemaking.** (1) The total loans or extensions of credit to a person, partnership, or corporation by a mutual association, including loans to a partnership and to the members of the partnership, may not exceed 15% of the mutual association's capital, plus an additional 10% of the mutual association's capital, if the amount that exceeds the mutual association's 15% general limit is fully secured by readily marketable collateral, as defined in 12 C.F.R. 32.2(v). To qualify for the additional 10% limit, the mutual association must perfect a security interest in the collateral under applicable law and the collateral must have a current market value at all times of at least 100% of the amount of the loan or extension of credit that exceeds the mutual association's 15% general limit.

(2) To the extent specified in regulations of the office of the comptroller of the currency, a mutual association may invest in, sell, or otherwise deal in the following loans and other investments without percentage of assets limitation:

(a) account loans -- loans on the security of its savings accounts and loans specifically related to transaction accounts;

(b) residential real property loans -- loans on the security of liens on residential real property;

(c) United States government securities -- investments in obligations of, or fully guaranteed as to principal interest by, the United States;

(d) federal home loan bank and federal national mortgage -- investments in the stock or bonds of a federal home loan bank or in the stock of the federal national mortgage association;

(e) federal home loan mortgage corporation instruments -- investments in mortgages, obligations, or other securities that are or have been sold by the federal home loan mortgage corporation pursuant to section 305 or 306 of the federal home loan mortgage corporation act; and

(f) other government securities -- investments in obligations, participations, securities, or other instruments issued by or fully guaranteed as to principal and interest by the federal national mortgage association, the student loan marketing association, the government national mortgage association, or any agency of the United States. A savings association may issue and sell securities that are guaranteed pursuant to section 306(g) of the National Housing Act.

(3) The commissioner may adopt rules to implement this section.

**Section 67. Bonding of employees.** (1) The board of directors of a mutual association shall require bonding for all officers and employees of the mutual association whose duty includes the handling of money, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the mutual association and its customers.

(2) The board of directors shall, by order entered on the minute books of the board, designate the officers and employees to be bonded and the amount

of bonds to be given. Action related to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds must be in a form provided or approved by the department.

(3) The bonds must be approved by the president of the mutual association, and the president's or executive officer's action must be reported to the board of directors.

(4) All bonds required by this section must be kept in the custody of the mutual association subject to inspection by examiners from the department. However, as far as possible, they may not be placed in the custody of the officer or employee for whom the bond is given.

**Section 68. Persons previously convicted – rulemaking.** (1) Unless the commissioner provides written consent:

(a) a person who has been convicted of a criminal offense involving dishonesty or a breach of trust or money laundering or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense may not:

(i) become or continue as an institution-affiliated party with respect to any mutual association;

(ii) own or control, directly or indirectly, any mutual association; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any mutual association; and

(b) a mutual association may not permit any person referred to in subsection (1)(a) to engage in any conduct or continue any relationship prohibited under subsection (1)(a).

(2) A person who knowingly violates subsection (1)(a) is subject to the penalties in [section 4(5)].

(3) The commissioner may adopt rules to implement this section.

**Section 69. Sale of securities by officer to mutual association.**

(1) A director, officer, or employee of a mutual association may not, directly or indirectly, for the person's account, for the person, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the mutual association of which the person is a director or officer any note or bond secured by any mortgage or trust deed on real estate or any contract arising from the sale of real estate, in which the director, officer, or employee is personally or financially interested, without a vote of the majority of the board of the mutual association, duly noted on the minutes of the meeting at which the transaction is decided on. The minutes must be signed by a majority of the board.

(2) Any director, officer, or employee of any mutual association who knowingly violates or consents to the violation of this provision is subject to the penalties in [section 4(5)].

**Section 70. Real estate that mutual associations may purchase, hold, or convey.** (1) A mutual association organized under the provisions of this chapter may purchase, hold, or convey real estate that:

(a) is for its accommodation in the transaction of its business, but the mutual association may not invest an amount exceeding 100% of its paid-up capital in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its mutual association business if property held for future use as a mutual association office site is held pursuant to a detailed written business plan formally adopted by the directors of the mutual association;

(b) is mortgaged to in good faith by way of security for loans previously made or money due to the mutual association;

(c) is conveyed to the mutual association in satisfaction of debts previously contracted in the course of its business; or

(d) it purchases at sales under judgments, decrees, or mortgages held by the mutual association.

(2) The detailed written business plan required by subsection (1)(a) must include information outlining the manner in which the acquired real estate will be developed for future use as a mutual association office site, including but not limited to the costs of projected construction, furniture, and equipment and fixtures.

**Section 71. Purchase of obligation of mutual association by officer.** A director, officer, agent, or other employee of a mutual association may not, directly or indirectly for the person's own benefit, purchase, sell, or be interested in the purchase or sale of any obligation of the mutual association or of any assets of the mutual association for a sum less than the amount that appears on the face of the obligation or obligations purchased or sold. A person violating the provisions of this section shall, in addition to the general penalties of this chapter, forfeit to the state twice the nominal amount or face value of the obligations or assets purchased or sold.

**Section 72. Fraud by director, officer, agent, or employee.** A director, executive officer, agent, or employee of a mutual association is guilty of a felony if that person:

(1) knowingly receives or takes possession of any mutual association property, except in payment for a just demand, and with intent to defraud:

(a) fails to make or fails to cause or direct to be made a full and true entry of the receipt or possession in its books and account; or

(b) concurs in failing to make any material entry in its books and account;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement that is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that mutual association as required by law, to exhibit the books, or to allow the books to be inspected and extracts to be taken from them by the department.

**Section 73. Removal of directors, officers, or employees -- hearing.**

(1) A director, officer, or employee of a mutual association who is found by the department, after examination, to be negligent, dishonest, reckless, or incompetent or to have violated [section 32, 72, 75, or 76] must be removed from office by the board of directors of the mutual association on the written order of the department. If the directors neglect or refuse to remove the director, officer, or employee and any losses accrue to the mutual association by reason of the negligence, dishonesty, recklessness, or incompetency of the director, officer, or employee, the written order of the department is conclusive evidence of the negligence of the failure of the directors to act as provided in this section in any action brought against the board of directors by a depositor or creditor for recovery of losses.

(2) If the board of directors refuses to remove the director, officer, or employee in response to an order of the department, the board of directors may file a request for hearing pursuant to the Montana Administrative Procedure Act.

**Section 74. Penalty for unlawful hypothecation of property received.** An officer or employee of a mutual association doing business in this state who, except in the manner authorized by law or the contract of the parties, pledges or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into the officer's or employee's hands

or into the possession of the mutual association as collateral, for safekeeping or in any other manner, and to which the mutual association has not acquitted full title, is guilty of theft and upon conviction must be punished as for other felonies.

**Section 75. Concealing actions from directors.** An officer or employee of a mutual association who intentionally conceals from the directors of the association, or from a committee of the mutual association when the directors have delegated authority, any discount or loan made by the corporation or from its assets between the regular meetings of its board of directors or committee, the purchase of any security, the sale of any of its securities, or any guarantee, repurchase agreement, or any other agreement through which the corporation is obligated, during the same period, is subject to the penalties set forth in [section 4(5)].

**Section 76. Theft of funds by directors, officers, or employees.** A director, officer, or employee of a mutual association who fraudulently appropriates or abstracts or misapplies any of the money, funds, credits, or property of the mutual association when owned by it or held in trust or who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent to injure or defraud the mutual association or any person or corporation or to deceive any officer of the mutual association, or any other person, or anyone appointed to examine the affairs of the mutual association or any other person who with like intent aids or abets any director, officer, or employee in the violation of this section is guilty of theft and upon conviction shall be imprisoned in the state prison for a period not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.

**Section 77. False statement to obtain loan.** A person who makes a statement, knowing it to be false, for the purpose of obtaining for that person or for any other person, firm, corporation, or association a loan of money from a mutual association or for the purpose of gaining an extension of time for the payment of any debt due the mutual association shall be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than 1 year, or both.

**Section 78. Mutual association holidays.** In addition to emergency closings authorized by [sections 111 through 115], a mutual association in the state may remain closed and refrain from doing business on those legal holidays designated in 1-1-216.

**Section 79. Transaction on holiday.** No law of this state may affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a mutual association in this state because it was done or performed during any time other than regular banking hours or on a legal holiday. A mutual association in this state, which by law or custom is entitled to close at 12 noon on any Saturday or for the whole or part of any legal holiday, may not be compelled to remain open for transaction of business or to perform any of the acts or transactions in this section on any Saturday after 12 noon or any legal holiday except at its option.

**Section 80. Closing on Saturdays authorized – Saturday treated as holiday.** A mutual association and a federal savings association incorporated or organized under the laws of the United States or a federal reserve bank may, at its election, remain closed and refrain from the transaction of business on Saturdays. Any Saturday on which a mutual association remains closed is, with respect to the mutual association, a holiday and not a business day. Any act authorized, required, or permitted to be performed on a Saturday at

or by or with respect to a mutual association, including any federal savings association or federal reserve bank, may be performed on the next succeeding business days, and no liability or loss of any rights of any kind will result from such closing on Saturday or from the nonopening of any mutual association for the transaction of business on any Saturday under the authority of [sections 80 through 82].

**Section 81. Mutual association hours and business days.** A mutual association may provide for its business hours or business days by giving reasonable notice to the public and providing a copy of the notice to the department.

**Section 82. Interest payable at mutual association on Saturday – how paid.** When, by the terms of any note or obligation, interest is payable to a mutual association on any Saturday on which a mutual association is closed pursuant to the authority of [sections 80 through 82], interest payable to the mutual association on that Saturday may be paid in the amount due on that Saturday on the next succeeding business day with the same effect as if paid to the mutual association on Saturday.

**Section 83. Destruction of records – rulemaking.** (1) Mutual associations are required to preserve or keep their records of customer accounts for at least 8 years after January 1 of the year following the time that the records are made. However, records showing unpaid balances in favor of depositors of a mutual association may not be destroyed. Liability may not accrue against a mutual association destroying any records, except records for which destruction is forbidden by this section, after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for mutual association records other than those records listed in subsection (1).

**Section 84. Definitions – reproductions of mutual association records – admissibility in evidence – cost recovery.** (1) For the purposes of this section, the following definitions apply:

(a) “Electronic storage” or “electronically stored” means the recording, storage, retention, maintenance, and reproduction of documents using microfiche, data processing, computers, or other electronic process that correctly and legibly stores and reproduces documents.

(b) “Mutual association records” includes any document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic storage medium, or other information-recording medium used in a mutual association’s normal course of business.

(2) (a) A photographic, photostatic, miniature photographic copy, or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, must be considered an original record for all purposes and must be treated as an original record in all courts and administrative agencies for the purposes of admissibility in evidence.

(b) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (2)(a) must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.

(3) Except as provided in subsection (7), mutual associations are authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, to be preserved, stored, used, and employed in carrying out business.

(4) In an action or proceeding in which mutual association records may be called in question or be demanded of a mutual association or any officer

or employee of a mutual association, a showing that the records have been destroyed in the regular course of business is a sufficient excuse for the failure to produce the records.

(5) Upon the showing required in subsection (4), secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions, photographic enlargements, and prints of microfilm reproductions, when made in the regular course of business, is admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(6) Any photostatic, photographic, or microfilm reproductions, including enlargements of the microfilm reproductions, made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda that were in existence on July 1, 1951, are admissible in evidence as proof of the form, text, and content of the originals that were destroyed in the regular course of business.

(7) A mutual association may, as a condition of providing mutual association records to a third party in response to a subpoena or another legal procedure or request, charge and collect the actual costs incurred in locating, reproducing, and providing the mutual association records.

**Section 85. Admissibility of copies in evidence – exception when original available.** Any photostatic, photographic, or microfilm reproductions, including enlargements, of any original records or files of a mutual association, whether in the form of an entry or entries in a book or any other form of record, are admissible in evidence in any court of competent jurisdiction in proof of an act, transaction, occurrence, or event if shown to be made in the regular course of business of the mutual association. Nothing in [sections 83 through 87] may be construed to authorize the use of secondary evidence in administrative or court proceedings if original records are in existence and available for use in accord with the rules of evidence.

**Section 86. Destruction or reproduction.** Destruction in the regular course of business includes destruction at any time after making reproductions. Reproductions made in the regular course of business include reproductions made at any time prior to the destruction of the original, in each case, if done in good faith and without intent to defraud.

**Section 87. Application.** The provisions of [sections 83 through 87] are applicable to all records in existence on February 23, 1951, and to all records originating after that date and apply to all mutual associations organized under the laws of the state and to all federal savings associations located in the state, as far as applicable to the federal savings associations.

**Section 88. Dissolution and disincorporation.** (1) Mutual associations may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a mutual association may, on a vote of two-thirds of its members at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts or upon agreement with all of its creditors to a plan of liquidation.

(2) A mutual association that wishes to voluntarily liquidate shall apply to the department for permission to liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution.

(3) The board of directors of a mutual association whose members have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the mutual association. The liquidating agent, on

authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the mutual association.

(4) Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors is not being protected. The decision of the department in these matters is controlling.

**Section 89. Grounds for closing mutual association.** (1) If it appears to the department that any of the following situations have occurred, the department may, in its discretion, close the mutual association and take possession of all of the books, records, assets, and business of every description of the mutual association and hold and retain possession of them until the mutual association is authorized by the department to resume business or until its affairs are liquidated as provided in this chapter, and it shall do so in cases in which a mutual association comes into its possession voluntarily or in the manner provided by law. The situations are as follows:

(a) a mutual association has willfully violated its charter or a law of this state;

(b) a mutual association has willfully violated a general rule of the department, made in accordance with law;

(c) the capital of a mutual association is impaired or for any reason is below the amount required by state or federal law and has not been made good after notice, as provided by law, or, without that notice, in the event a majority of the board of directors of the mutual association notifies the department in writing that the impairment cannot be made good;

(d) a mutual association cannot meet or has failed to meet its liabilities as they become due in the regular course of business;

(e) a mutual association's reserve has fallen below the amount required by state or federal law and it has failed to make good that reserve within 30 days after being requested to do so by the department, without that notice, if a majority of the directors, in writing, notifies the department that the reserve cannot be made good within 30 days or if is continually allowing its reserve to fall below the required amount;

(f) a mutual association is conducting business in an unsafe and unauthorized manner or is in an unsafe and unsound condition;

(g) a mutual association has refused to submit its papers, books, and concerns to the inspection of the department; or

(h) an officer of a mutual association has refused to be examined under oath regarding the affairs, business, or concerns of any mutual association as they relate to solvency or matters having to do with the supervision by the department.

(2) The powers and authority conferred on the department by this section, except in cases of voluntary surrender, are discretionary and not mandatory. As long as the department acts in good faith, the department and its employees and agents may not be held liable civilly or criminally or on their official bonds for action taken under this section or for any failure to act under it.

**Section 90. When mutual association insolvent.** A mutual association is insolvent within the meaning of this chapter when its capital is absorbed in losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and engagements.

**Section 91. Deposits in insolvent mutual associations.** (1) Except as otherwise provided by the Uniform Commercial Code, whenever a mutual association is insolvent in the manner set forth in this chapter, the mutual association may not accept or receive on deposit any money, financial bills or notes, United States treasury notes or currency, or other notes, bills, or drafts

circulating as money or currency or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it shall keep all such deposits of money, bills or notes, United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency separate and apart from the general assets of the mutual association from and after the date of the accrual of the insolvency. When the impairment or insolvency has been made good, the deposits received in trust may be transferred to the general assets of the mutual association on and by written consent of the department.

(2) If the insolvency is not made good, then all trust deposits must be returned to the depositors making them.

(3) An officer, director, cashier, manager, member, partner, or managing partner who knowingly accepts or receives, is accessory to, or permits or connives at the receiving or accepting of the trust deposits, except in the manner set forth in this section, is guilty of a felony and upon conviction shall be punished by a fine not exceeding \$10,000 or imprisonment in the state prison for a term not exceeding 5 years, or both.

**Section 92. Penalty for receiving deposits when insolvent or for making false statement.** (1) Any officer, agent, or clerk of a mutual association, knowing the mutual association to be insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts circulating as money or currency, except in the manner set forth in [section 91], who subscribes or makes any false statements or entries in the books of the mutual association, who knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of the mutual association, or who willfully subscribes or makes false reports is subject to the penalties set forth in [section 4(5)].

(2) Any person or the members of any partnership or mutual association who willfully or knowingly receive deposits, money, or commercial papers circulating as money, when the person, partnership, or mutual association is insolvent, or who subscribe or make any false statement or entries in the books of any such mutual association, who knowingly subscribe or exhibit any false papers with the intention of deceiving any person authorized to examine the condition of any mutual association provided for in this chapter, or who willfully subscribe or make false reports to the department are subject to the penalties set forth in [section 4(5)].

**Section 93. Power of closed mutual associations to borrow money from governmental agencies.** (1) Except as provided in subsection (2), after applying to and obtaining the approval of the department and the district court of the county in which the mutual association is located, the liquidating agents of closed mutual associations may borrow money from an agency of the federal government on behalf of mutual associations closed and in liquidation. As security for the loan, the liquidating agent may pledge or mortgage assets and properties for the purpose of paying depositors or creditors in part or in full.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply.

**Section 94. Corporate existence -- cessation.** (1) The charters and the corporate existence of mutual associations cease automatically and become nonexistent upon the completion of liquidation of the affairs of the mutual association, whether accomplished voluntarily or through a legal process.

(2) For the purposes of this section, a mutual association's affairs are considered liquidated and completed when all of its property of every kind has been sold or applied toward the payment of its obligations and the corporation is left without property in existence or in reasonable expectancy.

**Section 95. Taxes on mutual associations that have ceased to do business.** Whenever a mutual association ceases to do business as a mutual association, taxes may not be levied or collected in accordance with the laws governing the assessment of mutual associations but its property must be assessed in accordance with the laws governing the assessment of similar property of private corporations.

**Section 96. Penalty for maliciously declaring mutual association insolvent.** If, as a result of malice or for personal gain, an employee or agent of the department declares a mutual association insolvent, the employee or agent forfeits the employee's or agent's office.

**Section 97. Resumption after closing.** After the department has taken possession of a mutual association, it may permit the mutual association to resume business following conditions approved by the department.

**Section 98. Powers of department on closing mutual association – court proceedings.** (1) After taking the assets and business of a mutual association into its possession, the department is authorized to collect all money due to the mutual association and to do other acts necessary to conserve the mutual association's assets and business. The department shall proceed to liquidate the affairs of the mutual association.

(2) The department may, except as limited by the terms of this chapter, do any acts necessary or desirable for the protection of the property and assets of the mutual association, the speedy and economical liquidation of the assets and affairs of the mutual association, the payment of creditors, or the reopening and resumption of business when that is practicable or desirable.

(3) The department may institute, in its own name or in the name of the mutual association, legal proceedings it considers expedient for the purposes of subsection (1).

(4) (a) By applying to the district court of the county in which the mutual association is located or to the judge of that court, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets. The sale may be made to officers, directors, or others interested in the mutual association on the consent of the court.

(b) In the court proceedings, the mutual association must be made a party by notice issued on order of the court or judge, in place of summons, and served on an officer of the mutual association if there is an officer in the county.

(5) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (4) does not apply.

**Section 99. Recourse of aggrieved mutual association – injunction.**

(1) A mutual association aggrieved by the action of the department in taking possession of its assets or closing its doors may, within 14 days after possession has been taken, apply to the district court of the county in which its principal office of business is located to enjoin further proceedings by the department.

(2) The court, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the mutual association.

(3) The application for injunction may be heard at any time after 5 days' notice from the time of service on the department, in the discretion of the court, or at any time prior to that time by the consent of the department.

(4) Application must be made on the verified complaint of the mutual association, in the form used in civil actions, and a copy of the complaint must be served on the department with the order to show cause.

(5) The department shall, at least 2 days before the time set for hearing, file with the court and serve on counsel for the plaintiff an answer to the complaint, also in the form used in civil actions. Any questions raised by motion in other actions may be raised in the answer.

(6) On the issues raised by the complaint and answer, the court, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions.

(7) If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

(8) During the pendency of litigation, the department shall take action in relation to the assets of the mutual association necessary to conserve them.

**Section 100. Department may retain mutual association employees – liquidating agent's salary and expenses.** (1) The department may retain those officers or employees of the mutual association that it considers necessary. It shall require from the agent appointed by it and from those assistants who have charge of any of the assets of the mutual association that security for the faithful discharge of their duties as it considers proper.

(2) The salary of a liquidating agent and necessary clerical assistance and other expenses incurred by a liquidating agent must be borne equally and ratably by the mutual association or mutual associations in process of liquidation under the agent's charge in proportion to the total amount of resources of each of the mutual associations. The funds for those expenses must be raised by assessing each mutual association in ratio set forth in this section and paying those expenses directly to the persons entitled to them, without depositing any of the funds in the state treasury.

**Section 101. Compensation of agents and attorneys.** (1) Except as provided in subsection (2), after notice to the mutual association and subject to approval by a district court judge of the county in which the mutual association is located, the compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a mutual association whose assets and business have been taken possession of by the department must be fixed by the department. The department shall, on written request of the judge, supply semiannual statements showing the condition of the mutual association in the process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants must be fixed and approved before services are rendered. The compensation must be paid out of the funds of the mutual association in the hands of the department and are a proper charge and lien on the assets of the mutual association.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements in subsection (1) do not apply.

**Section 102. Notice to creditors of insolvent mutual association.** (1) Except as provided in subsection (2), the department shall give notice by advertisement once a week for 2 successive weeks in a newspaper of general circulation in the town or city where the mutual association is located, if there is one, or in another newspaper that is published in the state and designated by the department. The notice must call on all persons who have claims against the mutual association to present them to the department or its authorized agent at a place specified in the notice and to make sworn proof, in a form to

be fixed by the department, within the time specified in the notice, not less than 90 days after the date of the first publication. A copy of the notice must be mailed to all persons whose names appear as creditors on the books of the mutual association.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsection (1) do not apply and notice to creditors must be given pursuant to federal law.

**Section 103. Claims -- allowance and rejection.** (1) Except as provided in subsection (6), the department may reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice must be given the claimant personally or by common courier with tracking capability and an affidavit of the service of the notice, which is prima facie evidence of service, must be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the mutual association in the district court of the county in which the mutual association is located within 90 days after service. An appeal from the department's allowance may also be taken by any party in interest by serving notice on the department, stating the grounds of objection and filing an action in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

(6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law.

**Section 104. Payment of claims.** (1) Claims presented to the department prior to the expiration of the time fixed in the notice to creditors and allowed by it must be paid in the order of the priority fixed in this chapter.

(2) Those claims filed after that expiration and within 1 year of that expiration are entitled, after they have been allowed by the department, to share in the distribution of the assets of the mutual association only to the extent of the assets undistributed in the hands of the department and available for the payment of claims of their order of priority at the time claims are filed.

(3) All claims filed after the expiration of 1 year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind have been fully paid and a surplus remains in the hands of the department and then only from that surplus.

(4) If the federal deposit insurance corporation is appointed as the liquidating agent, the times fixed in subsections (1) through (3) do not apply and claims must be filed in accordance with times fixed pursuant to federal law.

**Section 105. Claims -- order of payment -- priorities.** (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a mutual association liquidated by the department is as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other mutual association in the process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the mutual association in trust;

(d) debts due depositors or holders of cashier's checks, certified checks, and drafts on correspondent financial institutions or mutual associations, including protest fees paid by them on valid checks or drafts presented after closing of the mutual association, pro rata. All deposit balances of other financial institutions, mutual associations, or trust companies and all deposits of public funds of every kind except those actually placed on special deposit under the statutes providing for deposit, including those of the United States, this state, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured and whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the mutual association, is considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) without regard to the priority computed from the date of closing of the mutual association in accordance with the provisions of 25-9-205; and

(f) unliquidated claims for damages and similar claims.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) or in preference to the payment of any claims of creditors within those subsections, pay off and discharge any lien, claim, or charge against the assets or property of the mutual association in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property and property on which the mutual association has liens by mortgage or otherwise. The department may create a fund or retain, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), money for those purposes.

(3) Collateral that has been put up or pledged as security for the payment of bills payable by a mutual association or loans or discounts that have been outstanding as rediscounts of a mutual association prior to the closing of it is not available to the other creditors of the mutual association in whole or in part until the bills payable or rediscounts have been retired, after which offsets as provided in this section must be allowed.

(4) Deposits of a person, firm, or corporation in a mutual association that is in the possession of the department may be offset against any indebtedness subject to subsection (3).

**Section 106. Claims – partial payments – assignments.** (1) At any time after taking possession of the mutual association and prior to the expiration of the period fixed for filing of claims, and if under the circumstances of the particular case it considers it expedient and safe and if it has on hand in cash sufficient funds in excess of the expenses of liquidation, the department may make pro rata distribution to any class of creditors entitled to distribution in the order of priority fixed in this chapter. The department shall make a payment to the creditors as they appear on the books and records of the mutual association and after determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the mutual association and from time to time after that date when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and make payments to all creditors of the mutual association pro rata in the order of their priority. If, after the time fixed for presentation of claims against the mutual association has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the

pro rata amount due the person as compared with the amounts paid to other creditors, nothing more may be paid to that creditor until the payment made to other creditors places them on equal footing.

(3) Claims against a mutual association in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding on the department only after they have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the mutual association. An assignment must be made by filing written notice, signed by the original claimant, with the department or person in charge of the mutual association. Assigned claims may not be offset against obligations due the mutual association. A check or draft drawn against a mutual association closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the mutual association or as an assignment of any amount, whether protested or not protested.

**Section 107. Deposit of funds in department's hands.** All funds in the hands of the department belonging to a mutual association in process of liquidation must be deposited in the department's name in those financial institutions in the state and designated by it and subject to its checks. Those funds must be preferred and protected as provided in this chapter.

**Section 108. Disposition of unclaimed funds.** (1) The department shall certify to the state treasurer a complete list of funds remaining with the department that are uncalled for and that have been left with it in its official capacity in trust for depositors in and creditors of a liquidated mutual association after the funds have been held by the department for 6 months from the date of the final liquidation of the institution. Along with this certificate, the department shall transmit to the state treasurer the funds, with accumulated interest on them, that it has held in trust for 6 months. A copy of the certificate must also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund.

(3) A depositor or creditor of a liquidated mutual association who has not been paid the amount standing to the person's credit as certified to the state treasurer may apply to the department for the amount due. The depositor or creditor shall make an affidavit and offer proof of identity and of the amount due. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the state treasurer, who shall audit the claim and, if the claim is found to be correct, certify the claim to the department. If the department approves the claim, it shall pay the claim to the depositor or creditor.

**Section 109. Disposition of assets remaining after payment of claims.** (1) (a) Except as provided in subsection (4), when the department has paid to each depositor and creditor of the mutual association whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the mutual association is located.

(b) If there are remaining assets on hand, the department may apply to the judge of the district court for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the mutual association while it was a going concern, to the directors of the mutual association in office at the time of closing it, as

trustees for members, or to some other person, if any, designated as trustee by a majority of the members. The report and petition must be set for hearing on notice that the court may direct.

(c) Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the mutual association. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties.

(d) The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the members as their rights may appear or dispose of the proceeds in some other manner as the members by majority action direct.

(e) On request of a majority of the members, the court may order the department to close up the trust as provided in subsection (2).

(2) (a) If the assets of the mutual association are insufficient for making payments in full to the depositors and creditors of the mutual association, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the mutual association with the clerk of court of the county in which the mutual association is located. On notice that the court may order, the report must be set for hearing before the court and, if the report is found correct and all funds accounted for, the court shall approve it.

(b) The department may at the same time and in the report make application to the district court of the county in which the mutual association is located for an order directing the closing of the trust, and upon entry of the order closing the trust, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the mutual association. The charter of the mutual association must be forfeited, and all of the stationery, correspondence, books, and records kept by the mutual association while it was a going concern and considered by the department to be of no value may be destroyed. However, correspondence or records may not be destroyed until 10 years after the date the mutual association ceases to be a going concern.

(3) On application for orders as provided in this section, the mutual association must be made a party by notice issued on order of the court or judge and served in a manner the court directs, and applications authorized by this section may be heard at any time on not less than 5 days' posted or served notice of the hearing.

(4) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) through (3) do not apply.

**Section 110. Further duties of liquidating officer.** (1) The liquidating officer of a mutual association may decide when the assets of a failed mutual association are not sufficient to pay the debts, contracts, engagements, and liabilities and may determine the time when and the court where necessary legal proceedings are conducted, subject to the general provisions of law governing venue and place of trial.

(2) For the purposes of this section, the term "liquidating officer" includes any person legally empowered to liquidate the business and affairs of a state mutual association, whether the liquidation is by the department or by its deputies and agents. The term also includes all receivers of state mutual associations qualified to liquidate a state mutual association under state law.

**Section 111. Department to file inventory – report required – exception.** (1) Except as provided in subsection (2), the department shall, within 90 days after taking charge of an insolvent mutual association, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent mutual association, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured.

(2) The department shall every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the mutual association, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report must contain other information the court requires, so that the court and the public may be apprised of the condition of the mutual association and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the mutual association and the manner in which claims are being paid. The report and account must be set for hearing on the notice the court may require and, if found to be correct, must be approved by the court.

**Section 112. Definitions.** As used in [sections 113 through 116], unless the context requires otherwise, the following definitions apply:

(1) “Emergency” means any condition or occurrence that may interfere physically with the conduct of normal business operations at any of the offices of a mutual association or that poses an imminent or existing threat to the safety or security of persons or property or both. Situations that an emergency may arise as a result of include but are not limited to:

- (a) fire;
- (b) flood;
- (c) earthquake;
- (d) hurricanes;
- (e) wind, rain, or snowstorms;
- (f) labor disputes or strikes;
- (g) power failures;
- (h) transportation failures;
- (i) interruption of communication facilities;
- (j) shortages of fuel, housing, food, transportation, or labor;
- (k) robbery or attempted robbery;
- (l) actual or threatened enemy attack;
- (m) epidemics or other catastrophes; or
- (n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

(2) “Mutual association” includes state mutual associations, any person or association of persons lawfully carrying on the business of mutual associations, whether incorporated or not, and, to the extent that the provisions of [sections 113 through 116] are not inconsistent with and do not infringe on paramount federal law, also includes federal savings associations.

(3) “Office” means any place at which a mutual association transacts its business or conducts operations related to its business.

(4) “Officer” means a person or persons designated by the board of directors, board of trustees, or other governing body of a mutual association to act for the mutual association in carrying out the provisions of [sections 113 through 116] or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the mutual association or of the office or offices involved.

**Section 113. Power of department.** When the department feels that an emergency exists or is impending in this state or in any part of this state,

it may, by proclamation, authorize mutual associations located in the affected area to close any of their offices. In addition, if the department is of the opinion that an emergency exists or is impending that affects or may affect a particular mutual association or mutual associations, or a particular office or offices of a particular mutual association, but not mutual associations located in the area generally, it may authorize the particular mutual association or mutual associations or office or offices so affected to close. The closed office or offices must remain closed until the department proclaims that the emergency has ended or until an earlier time that the officers of the mutual association determine that one or more of the closed offices should reopen and, in either event, for the amount of time afterward as may reasonably be required for them to reopen.

**Section 114. Powers of officers.** (1) When the officers of a mutual association feel that an emergency exists or is impending that affects or may affect any of a mutual association's offices, they may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on any business day or, if the offices have opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office closed in this way shall remain closed until the officers determine that the emergency has ended and for a further time afterward as may reasonably be required for them to reopen. However, an office may not remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.

(2) The officers of a mutual association may close any of the mutual association's offices on any day:

(a) designated by proclamation of the president of the United States or the governor of this state as a day of mourning, rejoicing, or other special observance; or

(b) that the federal reserve bank of Minneapolis is not open for business.

**Section 115. Notice of mutual association closing.** A mutual association closing an office under authority granted under [section 114] shall give to the department as prompt notice of its action as conditions will permit and by any means available. In the case of a federal savings association, the notice must be given to the comptroller of the currency.

**Section 116. Effect of closing.** (1) A day on which a mutual association or any of its offices is closed during any part of its normal mutual association hours under [sections 113 and 114] with respect to that mutual association or, if not all of its offices are closed, then with respect to the office or offices that are closed is a legal holiday for all purposes with respect to any mutual association business. No liability or loss of rights of any kind on the part of a mutual association, or a director, officer, or employee of the mutual association, may accrue or result by virtue of a closing authorized by [sections 113 and 114].

(2) The provisions of [sections 112 through 116] are in addition to any other law of this state or of the United States authorizing the closing of a mutual association or excusing the delay by a mutual association in the performance of its duties and obligations because of emergencies or conditions beyond the mutual association's control or otherwise.

**Section 117. Definition of savings institution.** As used in [sections 117 through 122], the term "savings institution" means a mutual association that is organized under the laws of this state.

**Section 118. Savings institutions empowered to receive federal deposit insurance corporation aid.** (1) A savings institution may, on the authority of its board of directors or a majority of the board, enter into the

contracts, incur the obligations, and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges available to savings institutions or to their depositors, creditors, conservators, or liquidators by virtue of the provisions of the Federal Deposit Insurance Act that establish the federal deposit insurance corporation and provide for the insurance of deposits or of any other act or resolution of congress to aid, regulate, or safeguard savings institutions and their depositors.

(2) A savings institution may subscribe for and acquire stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and may comply with the lawful rules and requirements from time to time adopted by that corporation.

**Section 119. Appointment of corporation as agent in liquidation.**

If a savings institution whose deposits are in any extent insured by the federal deposit insurance corporation created by the Federal Deposit Insurance Act, 12 U.S.C. 1811 through 1831, is closed on account of the savings institution's inability to meet the demands of its creditors, the department may appoint the corporation agent, without bond, to assist the department or act for it in the liquidation of that savings institution.

**Section 120. Subrogation of corporation.** Whenever any savings institution has been closed as provided in [section 119] and the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of the closed savings institution, the federal deposit and insurance corporation, whether or not it has been appointed agent of the department in the liquidation of the closed savings institution, must be and become subrogated by operation of law to all rights against the closed savings institution of each owner of a claim for deposit to the extent necessary to enable the federal deposit insurance corporation, under federal law, to make insurance payments available to depositors of closed insured savings institutions.

**Section 121. Examinations by corporation.** (1) The department may accept, in its discretion, in place of any examination authorized by the laws of this state to be conducted of a savings institution by the department, the examination made of the savings institution within a reasonable period by the federal deposit insurance corporation if a signed copy of the examination is furnished to the department.

(2) The department may also, in its discretion, accept a report relative to the condition of a savings institution obtained by the corporation within a reasonable period, in place of a report authorized by the laws of this state to be required of the savings institution by the department, if a copy of the report is furnished to the department.

(3) The department may, in its discretion, disclose to the corporation, or an official or examiner of the corporation, any information possessed by the department with reference to the conditions or affairs of an insured savings institution. The department may furnish to the corporation or to an official examiner of the corporation a copy or copies of any examinations made of those savings institutions and of any reports made by them.

**Section 122. Closed savings institutions empowered to borrow from corporation.** (1) If a savings institution is closed on account of the savings institution's inability to meet the demands of its depositors, by action of the department, by action of its directors, or in the event of its insolvency or suspension, the department or the department's agent may borrow from the corporation and furnish any of the assets of the savings institution to the corporation as security for a loan from the corporation. The department may sell to the corporation any part or all of the assets of the savings institution.

(2) The provisions of this section do not limit the power of a savings institution or the department to pledge or sell assets in accordance with any existing law.

**Section 123. Definitions.** As used in [sections 123 through 135], the following definitions apply:

(1) "Board member" means a member of the board of directors of the institution.

(2) "Cease and desist order that has become final" means a cease and desist order or an order with respect to which:

(a) a timely petition for review of the action has not been filed; or

(b) the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(3) "Institution" means a state mutual association.

(4) "Violation" includes without limitation any action, alone or with others, that causes, counsels, aids, or abets a violation.

**Section 124. Notice of charges -- hearing -- cease and desist order -- effective date.** (1) If the department has reasonable cause to believe that any institution is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the institution or is violating, has violated, or is about to violate a law or rule, the department may issue and serve on the institution a notice of charges. The notice must contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and must fix a time and place at which an administrative hearing pursuant to Title 2, chapter 4, part 6, will be held to determine whether an order to cease and desist should be issued against the institution.

(2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice unless an earlier or a later date is set by the hearings examiner at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it is considered to have consented to the issuance of the cease and desist order. In the event of consent or if upon the record made at any such hearing the hearings examiner finds that any unsafe or unsound practice or violation specified in the notice of charges has been established by the preponderance of the evidence, the commissioner may issue and serve on the institution an order to cease and desist from the practice or violation. By provisions that may be mandatory or otherwise, the order may require the institution and its board members, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(3) A cease and desist order becomes effective at the expiration of 30 days after the service of the order on the institution, except in the case of an order issued on consent, which is effective at the time specified. The cease and desist order remains effective and enforceable, except to the extent it is stayed, modified, terminated, or set aside by the action of the commissioner or a reviewing court.

**Section 125. Informal conferences -- time for application.** Within 15 days after service of the notice of charges, either the institution or the department may request an informal conference to discuss the charges and the possible disposition of the charges without a formal hearing process. The conference must be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the department may withdraw charges and proceedings for a cease and desist order.

**Section 126. Temporary cease and desist order -- grounds for issuance -- effective date -- injunctive relief.** (1) (a) Whenever the department determines that any violation or threatened violation or any

unsafe or unsound practice specified in the notice of charges served on the institution pursuant to [section 124(1)] or the continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the department may issue a temporary order requiring the institution to cease and desist from the violation or practice.

(b) The order must contain a statement of the facts constituting the alleged violation or unsafe or unsound practice.

(c) The order is effective upon service of the order on the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2), remains effective and enforceable until the completion of the administrative proceedings pursuant to the notice of charges, until the department dismisses the charges specified in the notice, or until a cease and desist order that is issued against the institution after the hearing becomes effective.

(2) Within 14 days after the institution has been served with a temporary cease and desist order, the institution may apply to the district court for the county in which the home office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings held pursuant to the notice of charges served on the institution under [section 124(1)]. The court has jurisdiction to issue the injunction.

**Section 127. Notice of intention to remove board member or officer – prohibiting participation – suspension.** (1) The department may serve on a board member or officer of an institution a written notice of intention to remove the member or officer from office whenever the department has reasonable cause to believe that:

(a) the board member or officer has:

(i) committed any violation of law involving dishonesty or breach of trust;

(ii) violated a cease and desist order that has become final;

(iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or

(iv) committed or engaged in any act, omission, or practice that constitutes a breach of the member's or officer's fiduciary duty as a board member or officer of the institution; and

(b) the institution has suffered or will likely suffer substantial financial loss or other damage or the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty involving personal dishonesty on the part of the board member or officer.

(2) The department may serve on a board member, officer, or other person of an institution a written notice of intention to remove the individual from office or to prohibit the individual's further participation in any manner in the conduct of the affairs of the institution if:

(a) in the opinion of the department, the board member or officer has, by conduct or practice with respect to another institution or business organization that has resulted in substantial financial loss or other damage to that institution or business organization, evidenced the member's or officer's personal disability and unfitness to continue as a board member or officer of the institution; or

(b) the department has reasonable cause to believe that any other person participating in the conduct of the affairs of the institution has, by conduct or practice with respect to the institution, another institution, or other business organization that has resulted in substantial financial loss or other damage to the institution or business organization, evidenced the person's personal

disability and unfitness to participate in the conduct of the affairs of the institution.

(3) A notice of intention to remove a board member, officer, or other person from office or to prohibit the individual's participation in the conduct of the affairs of an institution must contain a statement of the facts constituting grounds for the removal or prohibition and must fix a time and place at which a hearing will be held on the removal or prohibition. The hearing must be held not earlier than 30 days or later than 60 days after the date of service of the notice, unless an earlier or later date is set by the hearings examiner at the request of the individual and for good cause shown.

(4) Unless the board member, officer, or other person appears at the hearing in person or by a duly authorized representative, the individual must be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent or if on the record made at the hearing the hearings examiner finds that any of the grounds specified in the notice have been established by a preponderance of the evidence, the commissioner may issue orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution, as the commissioner considers appropriate. The order becomes effective 30 days after service on the institution and the individual concerned, except in the case of an order issued on consent, which becomes effective at the time specified in the order. The order remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of a reviewing court.

**Section 128. Informal conferences – time for application.** Within 15 days after service of the notice of charges sent pursuant to [section 127], the board member, officer, or other person may request an informal conference to discuss the charges and the possible disposition of the charges without a formal hearing process. The conference must be carried out in accordance with 2-4-603. Upon a proper showing, the department may withdraw charges and proceedings for a cease and desist order.

**Section 129. Suspension or prohibition effective on service – stay.** (1) (a) With respect to any board member, officer, or other person of an institution to whom notice is sent pursuant to [section 127], if the department considers it necessary for the protection of the institution or the interests of its depositors that the individual be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the department may serve on the individual a written notice suspending the individual from office or prohibiting the individual from further participation in any manner in the conduct of the affairs of the institution.

(b) The notice must contain a statement of the facts constituting grounds for the order and must fix a time, not later than 14 days from the date of the service of the notice, at which a hearing will be held to afford the individual the opportunity to respond.

(c) The suspension or prohibition is effective on service of the notice, and unless stayed by a court in proceedings authorized by subsection (2), remains in effect until:

(i) the completion of the administrative proceedings pursuant to the notice served under [section 126];

(ii) the department dismisses the charges specified in the notice; or

(iii) the order of removal or prohibition that is issued against the board member, officer, or other person becomes effective.

(d) Copies of the notice must also be served on the institution of which the individual is a director or officer or in the conduct of whose affairs the individual has participated.

(2) Within 14 days after the hearing provided for in subsection (1), the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served on the individual under [section 126]. The court has jurisdiction to stay the suspension or prohibition.

**Section 130. Felony charges – suspension or prohibition.** (1) (a) If a board member, officer, or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the department by written notice served on the individual may suspend that individual from office or prohibit that individual from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service on the individual.

(b) The notice must contain a statement of the facts constituting grounds for the order and must fix a place and time, not later than 14 days from the date of the notice, at which a hearing will be held to afford the individual the opportunity to respond. A copy of the notice must also be served on the institution.

(c) The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the commissioner.

(2) Within 14 days after the hearing provided for in subsection (1), the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant, or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) (a) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at the time that the judgment is not subject to further appellate review, the department may issue and serve on the individual an order removing that individual from office or prohibiting that individual from further participation in any manner in the conduct of the affairs of the institution except with the consent of the commissioner. A copy of the order must also be served on the institution, and upon receipt the board member or officer, if applicable, ceases to be a board member or officer of the institution.

(b) A finding of not guilty or other disposition of the charge does not preclude the department from instituting proceedings to suspend or remove the individual from office or to prohibit further participation in the affairs of the institution pursuant to [sections 127 and 128].

**Section 131. Board of directors – lack of quorum – temporary board members.** (1) If at any time because of the suspension or removal of one or more board members pursuant to [sections 123 through 135] the board of directors of an institution has less than a quorum of board members not suspended or removed, all powers and functions vested in or exercisable by the board vest in and are exercisable by the board members not suspended or removed until a time when there is a quorum of the board members.

(2) If all of the board members have been suspended or removed, the commissioner shall appoint persons to serve temporarily as board members, pending the termination of the suspensions or removals or until a time when their successors are duly elected and take office.

**Section 132. Hearings – decision – review, modification, termination, or stay of orders.** (1) A hearing provided for in [sections 123 through 135] must be conducted in accordance with the provisions of the Montana Administrative Procedure Act. The hearing must be private unless the commissioner, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. Within 90 days after the case has been submitted for final decision, the hearings examiner shall render a decision, which must include findings of fact on which the decision is based. The commissioner shall comply with 2-4-623 and issue and serve on each party to the proceeding an order consistent with the provisions of this section.

(2) (a) Any party to the hearing or any person required by an order issued under [sections 123 through 135] to cease and desist from any of the violations or practices stated in the order or any person suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order. The review must be pursuant to the Montana Administrative Procedure Act.

(b) Unless a petition for review is timely filed as provided in the Montana Administrative Procedure Act, the commissioner, at any time, on notice and in a manner that the commissioner considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the commissioner may modify, terminate, or set aside the order with the permission of the court.

**Section 133. Notices and orders – manner of service – copies to federal authorities.** Any service required or authorized to be made by the department pursuant to [sections 123 through 135] must be made on individual board members and officers by personal service and may be made on institutions by registered or certified mail or common courier with tracking capability or in any manner reasonably calculated to give actual notice as the department by rule or otherwise may provide. Copies of any notice or order served by the commissioner pursuant to the provisions of [sections 123 through 135] on any institution or any board member, officer, or other person participating in the conduct of the institution's affairs may also be sent to the appropriate federal supervisory authorities.

**Section 134. Enforcement of notices or orders.** The commissioner may apply to the district court of the county in which the home office of the institution is located or to the district court for Lewis and Clark County for the enforcement of any effective and outstanding notice or order issued under [sections 123 through 135]. The court has jurisdiction to require compliance.

**Section 135. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 32-2-101. Purpose -- definitions.
- 32-2-102. Fees paid into state treasury.
- 32-2-103. Application of chapter.
- 32-2-104. Conformity required.
- 32-2-105. Laws of other states -- reciprocity.
- 32-2-106. Penalties.
- 32-2-107. Obtaining property by fraud -- false report -- refusal to permit inspection of books.
- 32-2-108. Purchase of obligations of association by officer.
- 32-2-109. Purchase of assets of association by officer.
- 32-2-110. Payments to be made by building and loan associations.
- 32-2-111. Equality of rights.
- 32-2-201. Articles of incorporation -- contents.
- 32-2-202. Certified copy of articles prima facie evidence.

- 32-2-203. Evidence of corporate existence or capacity.
- 32-2-204. Bylaws.
- 32-2-205. Investigation -- certificate of incorporation, how issued.
- 32-2-206. Directors -- meetings -- officers.
- 32-2-207. Removal of directors.
- 32-2-208. Meetings of members or stockholders.
- 32-2-209. Notice of meetings.
- 32-2-210. Proxies.
- 32-2-211. Transfer of stock or account -- effect.
- 32-2-212. Requirements of transfer in certain cases.
- 32-2-232. Organization of mutual associations.
- 32-2-233. Expense fund for mutual association.
- 32-2-241. Organization of capital stock associations.
- 32-2-242. Capital stock association -- surplus fund -- verification statement.
- 32-2-243. Issuance of capital stock.
- 32-2-244. Restrictions on capital stock.
- 32-2-245. Purchase of stock of deceased stockholder.
- 32-2-251. Mutual and capital stock conversions.
- 32-2-252. Department approval.
- 32-2-253. Submission to members or stockholders.
- 32-2-254. Conversion of mutual to capital stock association -- mandatory plan requirements.
- 32-2-255. Conversion of capital stock to mutual association -- mandatory plan requirements.
- 32-2-256. Issuance of certificate -- continuance of entity.
- 32-2-257. Continuance of rights and obligations.
- 32-2-261. Foreign associations -- requirements.
- 32-2-262. Consent of agent.
- 32-2-263. Contracts void if made before compliance with law.
- 32-2-264. Shares of stock and savings accounts subject to attachment.
- 32-2-271. Consolidation and transfer -- branching prohibited.
- 32-2-301. Examinations by department.
- 32-2-302. Reports and accounts prescribed by department.
- 32-2-303. Reports of condition -- contents -- publication.
- 32-2-304. Removal of directors, officers, or employees.
- 32-2-305. Department to approve contracts paying income to person other than association -- penalty for not securing.
- 32-2-306. Department report.
- 32-2-307. Reports and examinations by department confidential.
- 32-2-308. Membership in federal home loan bank.
- 32-2-309. Insolvency or impairment of association -- powers of department.
- 32-2-401. Powers and duties of building and loan associations.
- 32-2-402. Limit on interest and penalties.
- 32-2-403. Statement of interest rates -- canceling loans.
- 32-2-404. Savings account withdrawal.
- 32-2-405. Pledging association assets.
- 32-2-406. Investments.
- 32-2-407. Real estate loans limited by congress.
- 32-2-408. Bonds of officers, agents, and employees.
- 32-2-409. Employment of agents -- licenses and revocation thereof.
- 32-2-410. Fund for contingent losses.
- 32-2-411. Payment of expenses -- losses -- dividends -- reserve fund.
- 32-2-412. Annual statements.
- 32-2-413. Form of statement -- where filed.

- 32-2-414. Interest or commissions not included in profits.
- 32-2-415. Limitation on loans.
- 32-2-416. Joint ownership.
- 32-2-417. Trust -- payment.
- 32-2-418. Savings held by minor.
- 32-2-420. Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944.
- 32-2-431. Voluntary liquidation and settlement.
- 32-2-432. Reorganization of associations under liquidation.
- 32-2-441. Conversion into federal savings and loan associations.
- 32-2-442. Effect of conversion of association -- powers and privileges.
- 32-2-501. Associations empowered to make loans on securities authorized by National Housing Act.
- 32-2-502. Transactions exempt from operation of state laws.
- 32-2-503. Application of sections.

**Section 136. Codification instruction.** [Sections 1 through 135] are intended to be codified as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to [sections 1 through 135].

Approved May 7, 2021

## CHAPTER NO. 432

[SB 363]

AN ACT GENERALLY REVISING INSURANCE LAWS; REVISING LAWS RELATING TO ANNUITIES; UPDATING MONTANA STATUTORY LANGUAGE TO CONFORM WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS LANGUAGE; AMENDING THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; PROHIBITING A PRIVATE CAUSE OF ACTION RELATING TO STANDARDS GOVERNING CONDUCT OF A FIDUCIARY OR A FIDUCIARY RELATIONSHIP; REVISING LAWS RELATING TO DUTIES OF INSURERS RELATING TO ANNUITY TRANSACTIONS; REVISING LAWS RELATED TO COMPLIANCE MITIGATION; REVISING LAWS RELATED TO PRODUCER TRAINING; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 33-20-802, 33-20-803, 33-20-804, 33-20-805, 33-20-806, AND 33-20-807, MCA.

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

**Section 1.** Section 33-20-802, MCA, is amended to read:

**“33-20-802. Purpose – scope.** (1) The purpose of this part is to require *producers to act in the best interest of the consumer when making a recommendation of an annuity and to require* insurers to establish *and maintain* a system to supervise recommendations ~~and to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products~~ so that the insurance needs and financial objectives of consumers at the time of the transaction are ~~appropriately effectively~~ addressed.

(2) This part applies to any ~~sale or recommendation to purchase, exchange, or replace of~~ an annuity ~~made to a consumer by an insurance producer or by an insurer when an insurance producer is not involved that results in the recommended purchase, exchange, or replacement.~~

(3) *Nothing in this part may be construed to create or imply a private cause of action for a violation of this part or to subject a producer to civil liability under*

*the best interest standard of care outlined in 33-20-805 or under standards governing the conduct of a fiduciary or a fiduciary relationship.”*

**Section 2.** Section 33-20-803, MCA, is amended to read:

**“33-20-803. Exemptions.** Unless otherwise specifically included, this part does not apply to recommendations involving:

(1) direct response solicitations when there is ~~not a~~ *no* recommendation made based on information collected from the consumer *pursuant to this part*;

(2) contracts used to fund:

(a) an employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(b) a plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code, 26 U.S.C. 401(a), 401(k), 403(b), 408(k), or 408(p), if established or maintained by an employer;

(c) a governmental plan or church plan defined in section 414 of the Internal Revenue Code, 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the Internal Revenue Code, 26 U.S.C. 457;

(d) a nonqualified deferred compensation plan *established or* maintained by an employer or plan sponsor;

~~(e)~~(3) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

~~(f)~~(4) formal prepaid funeral contracts; or

~~(g)~~(5) variable annuities regulated under Title 30, chapter 10.”

**Section 3.** Section 33-20-804, MCA, is amended to read:

**“33-20-804. Definitions.** As used in this part, the following definitions apply:

(1) “Annuity” means a fixed annuity that is individually solicited, regardless of whether the product is classified as an individual or group annuity.

(2) “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

(3) “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs, and financial objectives, including, at a minimum, the following:

(a) age;

(b) annual income;

(c) financial situation and needs, including debts and other obligations;

(d) financial experience;

(e) insurance needs;

(f) financial objectives;

(g) intended use of the annuity;

(h) financial time horizon;

(i) existing assets or financial products, including investment, annuity, and insurance holdings;

(j) liquidity needs;

(k) liquid net worth;

(l) risk tolerance, including but not limited to willingness to accept nonguaranteed elements in the annuity;

(m) financial resources used to fund the annuity; and

(n) tax status.

(4) "Continuing education credit" or "CE credit" means one continuing education credit as provided in Title 33, chapter 17.

(5) "Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to Title 33, chapter 17.

(6) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

(7) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

(8) (a) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.

(b) The term does not include cash compensation or noncash compensation.

(9) "Noncash compensation" means any form of compensation that is not cash compensation, including but not limited to health insurance, office rent, office support, and retirement benefits.

(10) "Nonguaranteed elements" means the premiums, credited interest rates including any bonuses, benefits, values, dividends, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(11) "Producer" or "insurance producer" means a person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. For the purposes of this part, the term includes an insurer in which no producer is involved.

~~(2) "Insurance producer", in addition to the definition in 33-17-102, includes an insurance producer licensed to sell, solicit, or negotiate annuities.~~

~~(3) "Insurer", in addition to the definition in 33-1-201, includes an insurer providing annuity products.~~

~~(4)(12) (a) "Recommendation" means advice provided by an insurance a producer or by an insurer when an insurance producer is not involved to an individual consumer that was intended to result or does result results in a purchase, an exchange, or a replacement of an annuity in accordance with that advice.~~

~~(b) The term does not include general communication to the public, generalized customer services, assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.~~

~~(5)(13) "Replacement" means a transaction in which a new policy or contract annuity is to be purchased, and it is known or should be known to the proposing producer or to the proposing insurer, whether or not when an insurance a producer is not involved, that by reason of the transaction, an existing annuity or other insurance policy or contract has been or is to be any of the following:~~

~~(a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;~~

~~(b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;~~

~~(c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;~~

- (d) reissued with any reduction in cash value; or
- (e) used in a financed purchase.
- (6) ~~“Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~
  - ~~(a) age;~~
  - ~~(b) annual income;~~
  - ~~(c) financial situation and needs, including the financial resources used for the funding of the annuity;~~
  - ~~(d) financial experience;~~
  - ~~(e) financial objectives;~~
  - ~~(f) intended use of the annuity;~~
  - ~~(g) financial time horizon;~~
  - ~~(h) existing assets, including investment and life insurance holdings;~~
  - ~~(i) liquidity needs;~~
  - ~~(j) liquid net worth;~~
  - ~~(k) risk tolerance;~~
  - ~~(l) tax status; and~~
  - ~~(m) whether the consumer has a reverse mortgage.”~~

**Section 4.** Section 33-20-805, MCA, is amended to read:

~~“33-20-805. Duties of insurers, insurance and producers, and independent agencies – best interest obligations. (1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer or the insurer when an insurance producer is not involved must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer’s investments, other insurance products, financial situation, and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following: A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest. A producer has acted in the best interest of the consumer if the producer has satisfied the following obligations regarding care, disclosure, conflict of interest, and documentation:~~

~~(a) The producer, in making a recommendation, shall exercise reasonable diligence, care, and skill to:~~

~~(i) know the consumer’s financial situation, insurance needs, and financial objectives;~~

~~(ii) understand the available recommendation options after making a reasonable inquiry into options available to the producer;~~

~~(iii) have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and~~

~~(iv) communicate the basis or bases of the recommendation to the consumer in writing.~~

~~(b) The requirements under subsection (1)(a)(i) include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.~~

~~(c) The requirements under subsection (1)(a) require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs, and~~

*financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers are to be held to standards applicable to producers with similar authority and licensure.*

*(d) The requirements under this subsection (1) do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this part.*

*(e) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under the care obligation of this section may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.*

*(f) The requirements under subsection (1)(a)(i) include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.*

*(g) The requirements under subsection (1)(a)(i) apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.*

*(h) The requirements under subsection (1)(a)(i) do not mean the annuity with the lowest one-time or multiple occurrence compensation structure may necessarily be recommended.*

*(i) The requirements under subsection (1)(a)(i) do not mean the producer has ongoing monitoring obligations under the care obligation under this section, although this obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.*

*(2) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:*

*(a) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;*

*(b) the replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and*

*(c) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.*

*(3) Nothing in this part may be construed to require a producer to obtain a license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this part, provided the producer does not discuss risks specific to a consumer's individual securities holdings, does not provide advice regarding a consumer's specific securities or securities investment performance, does not compare a consumer's securities or securities investment performance with the annuity products being recommended, does not recommend the liquidation of specific securities or identify specific securities that could be used to fund the purchase of a recommended annuity product, does not recommend specific allocations between insurance and securities products, does not offer research, analysis, or*

recommendations to a consumer regarding specific securities, and does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

(4) (a) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to a model form established by the insurance department:

(i) a description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(ii) an affirmative statement on whether the producer is licensed and authorized to sell the following products:

- (A) fixed annuities;
- (B) fixed indexed annuities;
- (C) variable annuities;
- (D) life insurance;
- (E) mutual funds;
- (F) stocks and bonds; and
- (G) certificates of deposit;

(iii) an affirmative statement describing the insurers the producer is authorized, contracted or appointed, or otherwise able to sell insurance products for, using the following descriptions:

- (A) from one insurer;
- (B) from two or more insurers; or
- (C) from two or more insurers although primarily contracted with one insurer;

(iv) a description of the sources and types of cash compensation and noncash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other producer, or by fee as a result of a contract for advice or consulting services; and

(v) a notice of the consumer's right to request additional information regarding cash compensation described in subsection (4)(b).

(b) On request of the consumer or the consumer's designated representative, the producer shall disclose:

(i) a reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and

(ii) whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

~~(a)~~(c) Prior to, or at the time of the recommendation or sale of an annuity, the producer has a reasonable basis to believe the consumer has been reasonably informed of various features of the annuity, including such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in nonguaranteed elements of the annuity, insurance and investment components, and market risk;

(d) A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(e) A producer shall, at the time of recommendation or sale:

(i) make a written record of a recommendation and the basis for the recommendation subject to this part;

(ii) obtain a signed statement from a consumer on a form substantially similar to a model form established by the insurance department documenting:

(A) a customer's refusal to provide the consumer profile information, if any; and

(B) a customer's understanding of the ramifications of not providing the customer's consumer profile information or providing insufficient consumer profile information; and

(iii) obtain a signed statement from a consumer on a form substantially similar to a model form established by the insurance department acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(5) Any requirement applicable to a producer under this section must apply to each producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

(b) the consumer would receive a benefit from the transaction;

(c) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase, exchange, or replacement of the annuity, and riders and similar product enhancements, if any, are suitable for the particular consumer based on the consumer's suitability information; and

(d) in the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:

(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(ii) the consumer would benefit from product enhancements and improvements;

(iii) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months; and

(iv) the transaction as a whole is suitable for the consumer based on the consumer's suitability information.

(2) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer or an insurer when an insurance producer is not involved shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as permitted under subsection (4), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(6) (a) Except as provided under subsection (4)(b), an insurance producer or an insurer when an insurance producer is not involved does not have any subsection (6)(b), a producer has no obligation to a consumer under subsection (1) or (3) (1) related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation is made but later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) the consumer refuses to provide relevant ~~suitability~~ *consumer profile* information requested by the insurer or insurance producer and the annuity transaction is not recommended; or

(iv) the consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or insurance producer.

(b) An insurer's or insurance producer's issuance of an annuity under *this* subsection ~~(4)(a)~~ (6) must be reasonable under all the circumstances actually known or which after reasonable inquiry should be known to the insurer or insurance producer at the time the annuity is issued.

~~(5) An insurance producer or an insurer when an insurance producer is not involved shall at the time of sale:~~

~~(a) make a record of any recommendation subject to subsection (1);~~

~~(b) obtain a statement signed by the consumer acknowledging the consumer's refusal to provide suitability information, if any; and~~

~~(c) if a consumer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation, obtain a statement signed by the consumer acknowledging that the annuity transaction is not recommended;~~

(7) (a) *Except as permitted under subsection (6), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.*

~~(6)(b)~~ An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this section part and, at a minimum, ~~shall include the following:~~

~~(a)(i)~~ *the insurer shall establish and maintain reasonable procedures to inform its insurance producers of the requirements of this section part and shall incorporate the requirements of this section part into relevant insurance producer training manuals;*

~~(b)(ii)~~ *the insurer shall establish and maintain standards for insurance producer product training and shall establish and maintain reasonable procedures to require its insurance producers to comply with the requirements of 33-20-807;*

~~(c)(iii)~~ *the insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its insurance producers;*

~~(d)(iv)~~ *the insurer shall establish and maintain procedures for the review of each recommendation prior to the issuance of an annuity that are designed to ensure that there is a reasonable basis for determining to determine that a recommendation is suitable for the consumer prior to issuance of an annuity the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. The review procedures must establish selection criteria may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including but not limited to physical review. The electronic system or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.*

~~(e)(v)~~ *the insurer shall establish and maintain reasonable procedures, such as to detect recommendations that are not in compliance with subsections (1), (4), (5), (6), (8), and (9). This may include but is not limited to confirmation of the consumer suitability consumer's consumer profile information, systematic*

consumer surveys, *producer and consumer interviews*, confirmation letters, *producer statements or attestations*, and programs of internal monitoring, ~~to detect recommendations that are not suitable~~; and. *Nothing in this subsection prevents an insurer from complying with this subsection by applying sampling procedures or by confirming consumer profile information or other required information under this section after issuance or delivery of the annuity.*

(vi) *the insurer shall establish and maintain reasonable procedures to assess, prior to or on issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;*

(vii) *the insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;*

(viii) *the insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subsection (7) are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based on the volume of sales of a specific annuity within a limited period of time.*

~~(ix)~~(ix) *the insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.*

~~(7)(a)~~ ~~An~~ (c) (i) *Nothing in this subsection (7) restricts an insurer from may contract with a third party to establish and maintain a system of supervision as provided for in contracting for performance of a function, including maintenance procedures, required under this subsection (6) (7).*

(b) *An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under 33-1-317 and 33-1-318 33-20-806 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subsection (7)(c)(e) (7)(c)(ii).*

~~(c)(ii)~~ (ii) *An insurer's supervision system under this subsection (6) (7) must include supervision of contractual the performance of third parties under this subsection. (7) and must include, at a minimum, This includes but is not limited to the following:*

(i)(A) *annually obtaining a certification from a senior manager who has responsibility for the contracted function director, officer, or principal of the third party that the third party is performing the required functions; that the manager has reasonable basis to represent, and does represent that the function is being properly performed; and*

(ii)(B) *monitoring and, as appropriate, conducting audits to ensure that the third parties are performing the required functions contracted function is properly performed.*

(8)(d) *An insurer is not required by this section to include in its system of supervision:*

(i)(a) ~~review or provide for review of insurance producer solicited transactions not related to annuities; or~~

(b) ~~include in its system of supervision an insurance a producer's recommendations to consumers of products other than the annuities offered by the insurer; or~~

(ii) consideration of or comparison to options available to the producer or compensation relating to those options other than the annuities or other products offered by the insurer.

~~(9)(8) An insurance~~ A producer or an insurer ~~when an insurance producer is not involved~~ may not dissuade or attempt to dissuade a consumer from:

(a) truthfully responding to an insurer's request for confirmation of ~~suitability~~ the consumer profile information;

(b) filing a complaint; or

(c) cooperating with the investigation of a complaint.

(9) (a) Recommendations and sales of annuities made in compliance with comparable standards must satisfy the requirements under this part. This subsection (9) applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if the standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection (9) may limit the insurance commissioner's ability to investigate and enforce the provisions of this part.

(b) Nothing in subsection (9)(a) may limit the insurer's obligation to comply with subsection (7) of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c) For subsection (9)(a) to apply, an insurer shall:

(i) monitor the relevant conduct of the financial professional seeking to rely on subsection (9)(a) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws, using information collected in the normal course of an insurer's business; and

(ii) provide to the entity responsible for supervising the financial professional seeking to rely on subsection (9)(a), such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist the entity to maintain its supervision system.

(d) For the purposes of this subsection, "financial professional" means a producer that is regulated and acting as:

(i) a broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(ii) an investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

(iii) a plan fiduciary under section 3(21) of the Employee Retirement Income Security Act of 1974 or a fiduciary under section 4975(e)(3) of the Internal Revenue Code.

(e) For the purposes of this subsection, "comparable standards" means:

(i) with respect to broker-dealers and registered representatives of broker-dealers, applicable securities and exchange commission and financial industry regulatory authority rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including but not limited to regulation best interest;

(ii) with respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on the investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, Title 30, chapter 10, including but not limited to the Form ADV and interpretations; and

(iii) *with respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to the status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., or the Internal Revenue Code.*

~~(10)~~(10) (a) Insurers, insurance producers, and independent agencies shall maintain or ~~must~~ be able to make available to the commissioner records of the information collected from the consumer, *disclosures made to the consumer, including summaries of oral disclosures*, and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of ~~an insurance~~ a producer.

(b) Records required to be maintained by this section may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.”

**Section 5.** Section 33-20-806, MCA, is amended to read:

**“33-20-806. Mitigation of responsibility Compliance mitigation – penalties – enforcement.** (1) *The An insurer is responsible for compliance with this part. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:*

(a) *an insurer or insurance producer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this part by the insurer’s or insurance producer’s violation of this part the insurer, an entity contracted to perform the insurer’s supervisory duties, or the producer; or*

(b) ~~an insurance producer or a general agency, independent agency, or the that employs or contracts with another insurance producer to sell or solicit the sale of annuities to consumers~~ to take reasonably appropriate corrective action for any consumer harmed by the ~~other insurance producer’s~~ violation of this part; *and*

(c) *appropriate penalties and sanctions.*

(2) A violation of this part is an unfair trade practice under Title 33, chapter 18. Fines may be imposed pursuant to 33-1-317.

(3) *Any applicable penalty for a violation of this part may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.*

(4) *The authority to enforce compliance with this part is vested exclusively with the commissioner.”*

**Section 6.** Section 33-20-807, MCA, is amended to read:

**“33-20-807. Annuity education Producer training.** (1) ~~An insurance~~ A producer may not solicit the sale of an annuity product unless:

(a) the ~~insurance~~ producer has adequate knowledge of the product to recommend the ~~annuity~~; *annuity* and

(b) the ~~insurance~~ producer is in compliance with the insurer’s standards for product training. *A producer may rely on insurer-provided product-specific training standards and materials to comply with this section.*

(2) (a) (i) *A producer who engages in the sale of annuity products shall complete a one-time, 4-credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.*

(ii) *Producers who hold a life insurance line of authority on [the effective date of this act] and who desire to sell annuities shall complete the requirements of this section within 6 months after [the effective date of this act]. Individuals who obtain a life insurance line of authority on or after [the effective date of this*

act] may not engage in the sale of annuities until the annuity training course required under this section has been completed.

(b) *The minimum length of the training required under this subsection (2) must be sufficient to qualify for at least 4 continuing education credits, but may be longer.*

(2)(c) The training required under this section must include, at a minimum, information on the following topics:

(a)(i) the types of annuities and various classifications of annuities;

(b)(ii) identification of the parties to an annuity;

(c)(iii) how product-specific annuity contract features affect consumers;

(d)(iv) the application of income taxation of qualified and nonqualified annuities;

(e)(v) the primary uses of annuities; and

(f)(vi) appropriate *standard of conduct*, sales practices, replacement, and disclosure requirements.

(3)(d) Training required under this section may not include any information on marketing, sales techniques, or the specific aspects of a particular insurer's products.

(4)(e) An insurer shall verify that an ~~insurance~~ a producer has completed the training under this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided by a database system satisfactory to the commissioner.

(f) *A producer who has completed an annuity training course approved by the department of insurance prior to [the effective date of this act] shall, within 6 months after [the effective date of this act], complete either:*

(i) *a new 4-credit training course approved by the department of insurance after [the effective date of this act]; or*

(ii) *an additional one-time, 1-credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices and replacement and disclosure requirements under this part.*

(g) *The satisfaction of the components of the training requirements of a course or courses with components substantially similar to the provisions of this section must be considered to satisfy the training requirements of this section in this state."*

Approved May 7, 2021

## CHAPTER NO. 433

[HB 380]

AN ACT REQUIRING SENATE CONFIRMATION FOR MEMBERS OF THE JUDICIAL STANDARDS COMMISSION; AND AMENDING SECTION 3-1-1101, MCA.

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

**Section 1.** Section 3-1-1101, MCA, is amended to read:

**"3-1-1101. Creation and composition of commission.** There is created a judicial standards commission consisting of five members as follows:

(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court, ~~and their~~. *The election must be certified by the chief justice of the supreme court, which for the purpose of this part is considered as an*

appointment. *After the chief justice certifies the election, each judge must be confirmed by the senate.;*

(2) one attorney who has practiced law in this state for at least 10 years, appointed by the supreme court *and confirmed by the senate; and*

(3) two citizens who are not attorneys or judges of any court, active or retired, appointed by the governor *and confirmed by the senate.*”

Approved May 8, 2021

## CHAPTER NO. 434

[HB 464]

AN ACT REPEALING THE LOCAL OPTION MOTOR FUEL EXCISE TAX; REPEALING SECTIONS 7-14-301, 7-14-302, 7-14-303, AND 7-14-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

7-14-301. Local option motor fuel excise tax authorized -- definitions.

7-14-302. Use of local motor fuel excise tax revenue.

7-14-303. Allocation of revenue and disposition of funds from county-imposed motor fuel excise tax.

7-14-304. Collection of delinquent tax -- interest and penalty -- statute of limitations.

**Section 2. Effective date.** [This act] is effective July 1, 2021.

Approved May 8, 2021

## CHAPTER NO. 435

[SB 81]

AN ACT REVISING 9-1-1 FEES; REQUIRING THE PAYMENT OF 9-1-1 FEES FOR PREPAID WIRELESS SERVICES; ESTABLISHING HOW 9-1-1 FEES ARE IMPOSED ON SERVICES; ESTABLISHING A PROCESS FOR THE COLLECTION OF PREPAID WIRELESS 9-1-1 FEES; ALLOWING A SELLER OF PREPAID WIRELESS SERVICES TO DEDUCT AND RETAIN A PORTION OF THE FEES; LIMITING LIABILITY FOR SELLERS THAT ENGAGE IN PREPAID WIRELESS TRANSACTIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 10-4-101, 10-4-117, 10-4-201, 10-4-203, 10-4-204, 10-4-205, 10-4-211, 10-4-212, AND 10-4-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Collection of charge -- prepaid wireless services -- deduction.** (1) (a) Except as provided in subsections (1)(d) and (3), a seller shall collect the fee imposed pursuant to 10-4-201(1)(c) from the subscriber for each transaction occurring in Montana.

(b) The fee imposed pursuant to 10-4-201(1)(c) must be stated separately on an invoice, receipt, or other similar document provided to the subscriber by the seller or otherwise disclosed to the subscriber.

(c) A transaction is considered to have occurred in Montana if:

(i) the sale to the subscriber occurs at a business located in Montana;

(ii) the prepaid wireless service is delivered to the subscriber at a Montana address provided to the seller;

(iii) the seller's records that are maintained in the ordinary course of business indicate that the subscriber's address is in Montana, and the records are not made or kept in bad faith;

(iv) the subscriber gives a Montana address during the consummation of the transaction, including the subscriber's payment instrument, if no other address is available, and the address is not given in bad faith; or

(v) the subscriber's mobile telephone number is associated with a location in Montana.

(d) If the amount of a prepaid wireless service is denominated as 10 minutes or less or as \$5 or less, a seller is not required to collect the fee imposed pursuant to 10-4-201(1)(c).

(2) (a) A seller may deduct and retain the entirety of the first quarter's fees of 2022.

(b) Beginning in the second quarter of 2022, a seller may deduct and retain 2% of the fee for each transaction collected in accordance with 10-4-201(1)(c).

(3) A business entity may collect and remit the fee in accordance with this chapter for each seller directly or indirectly owned or operated by that business entity.

**Section 2. Prepaid wireless services – liability.** (1) The prepaid wireless 9-1-1 fee collected pursuant to 10-4-201(1)(c) is the liability of the consumer and not of the seller, except that the seller is liable to remit the prepaid wireless 9-1-1 fee that the seller collects from consumers to the department of revenue in accordance with this chapter, including all fees that the seller collects when the amount of the fee is not separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller in accordance with [section 1(1)(b)].

(2) (a) A seller is not liable for damages to a person resulting from or incurred in connection with the provision of or failure to provide 9-1-1 or enhanced 9-1-1 service or for identifying or failing to identify the telephone number, address, location, or name associated with a person or device accessing or attempting to access 9-1-1 or enhanced 9-1-1 service.

(b) A seller is not liable for damages to a person resulting from or incurred in connection with the provision of any lawful assistance to any local government, state, or federal investigative or law enforcement officer in connection with any lawful investigation or other law enforcement activity by the local government, state, or federal investigative or law enforcement officer.

(3) The prepaid wireless 9-1-1 fee collected pursuant to 10-4-201(1)(c) is the only 9-1-1 funding obligation imposed on prepaid wireless services in Montana, and no tax, fee, surcharge, or other charge may be imposed for 9-1-1 funding purposes with respect to the sale, purchase, use, or provision of prepaid wireless services.

**Section 3.** Section 10-4-101, MCA, is amended to read:

**“10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “9-1-1 system” means telecommunications facilities, circuits, equipment, devices, software, and associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Emergency communications" means any form of communication requesting any type of emergency services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video communications, as well as transmission of any text message or analog digital data.

(6) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(7) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service provided in connection with the services described in subsection (7)(a).

(8) "Interconnected voice over IP service" means a service that:

(a) enables real-time, two-way voice communications;

(b) requires a broadband connection from a user's location;

(c) requires IP-compatible customer premises equipment; and

(d) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(9) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(10) "Local government" has the meaning provided in 7-11-1002.

(11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational policies and procedures that:

(a) provides standardized interfaces from call and message services;

(b) processes all types of emergency calls, including nonvoice or multimedia messages;

(c) acquires and integrates additional data useful to emergency communications;

(d) delivers the emergency communications or messages, or both, and data to the appropriate public safety answering point and other appropriate emergency entities;

(e) supports data and communications needs for coordinated incident response and management; and

(f) provides a secure environment for emergency communications.

(12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.

(13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.

(14) "Prepaid wireless service" means a commercial mobile radio service that:

(a) allows a subscriber to use a 9-1-1 system to engage in emergency communications; and

(b) is paid for in advance and sold in predetermined units or dollars of which the number declines with use in a known amount, including prepaid wireless phone cards, recharge or refill authorization codes, and prepaid cell phones or other prepaid wireless devices preloaded with airtime minutes.

(14)(15) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(15)(16) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.

(16)(17) "Public safety agency" means a functional division of a local or tribal government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.

(17)(18) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.

(18)(19) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(20) "Seller" means a person who owns or operates a business that sells prepaid wireless services directly to a subscriber.

(19)(21) "Subscriber" means:

(a) an end user who has an access line or who contracts with a wireless provider for commercial mobile radio services; or

(b) a customer who purchases prepaid wireless services from a seller in a transaction.

(22) "Transaction" means the purchase of prepaid wireless service from a seller for any purpose other than resale.

(20)(23) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.

(21)(24) "Tribal government" has the meaning provided in 2-15-141.

(22)(25) “Wireless provider” means an entity that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state.”

**Section 4.** Section 10-4-117, MCA, is amended to read:

**“10-4-117. Provider and seller obligations – limitations.** Nothing in this chapter:

(1) relieves a provider *or seller* from its obligations pursuant to parts 1 through 3 of this chapter, including obligations pursuant to 10-4-201 to collect 9-1-1 fees from customers on a per access line basis; or

(2) grants the department the authority to regulate the services offered by an originating service provider *or by a seller.*”

**Section 5.** Section 10-4-201, MCA, is amended to read:

**“10-4-201. Fees imposed for 9-1-1 services.** (1) Except as provided in 10-4-202:

(a) for 9-1-1 services, *which do not include prepaid wireless services included in subsection (1)(c)*, a fee of ~~75~~ 75 cents a month per access line on each subscriber in the state is imposed for the administration of 9-1-1 programs in accordance with 10-4-305; and

(b) a fee of ~~25~~ 25 cents a month per access line on each subscriber *as defined in 10-4-101(21)(a)* in the state is imposed for the grants provided in accordance with 10-4-306; and

(c) *for prepaid wireless 9-1-1 services, a fee of \$1 per transaction in the state is imposed on charges for prepaid wireless services.*

(2) The subscriber paying for an access line *or prepaid wireless service* is liable for the fees imposed by this section.

(3) (a) ~~The~~ *Except as provided in subsection (3)(b)*, the provider shall collect the fees. The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(b) *For the purposes of collecting the fee imposed in subsection (1)(c), the seller shall collect the fee in accordance with this chapter. The amount of the fees collected by the seller is considered payment by the subscriber for that amount of fees.*

(4) Any return made by the provider *or seller* collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.”

**Section 6.** Section 10-4-203, MCA, is amended to read:

**“10-4-203. Provider and seller required to maintain record of collections.** ~~Every~~ A provider *or seller* responsible for the collection of the fee imposed by 10-4-201 shall keep records, render statements, make returns, and comply with rules adopted by the department of revenue with respect to the fee. Whenever necessary in the judgment of the department of revenue, it may require the provider, *seller*, or subscriber, *as defined in 10-4-101(21)(a)*, to make returns, render statements, or keep records sufficient to show whether there is liability for the fee.”

**Section 7.** Section 10-4-204, MCA, is amended to read:

**“10-4-204. Deadlines for filing returns.** (1) The provider *or seller* collecting the fee under 10-4-201 ~~must~~ *shall* file a return with the department of revenue on or before the last day of the month following the end of each calendar quarter, reporting the amount of fee due on access lines *or the amount charged for the prepaid wireless fee* during the quarter. Returns are subject to the penalty for false swearing provided in 45-7-202.

(2) When a return of the fee is required, the provider *or seller* required to make the return shall pay the fee due the department of revenue at the time fixed for filing the return.

(3) The provider *or seller* shall pay the fee based on the net amount billed for the access line fee *or the amount charged for the prepaid wireless fee* during the quarter.

(4) As used in this section, the “net amount billed for the access line fee” *and the “amount charged for the prepaid wireless fee”* equals the gross amount billed *or charged* for the service, less *deductions made in accordance with [section 1(2)]*, adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.”

**Section 8.** Section 10-4-205, MCA, is amended to read:

**“10-4-205. Refund to provider *or seller* for excess payment of fee.**

If the amount paid by a provider *or seller* to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest on the excess payment at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund. A refund may not be made to a provider *or seller* who fails to claim the refund within 5 years after the due date for filing of the return with respect to which the claim for refund relates.”

**Section 9.** Section 10-4-211, MCA, is amended to read:

**“10-4-211. Provider *or seller* required to hold fee in trust for state – penalty and interest.** (1) ~~Every~~ A provider *or seller* required to collect the fee imposed by 10-4-201 holds it in trust for the state of Montana and for the payment ~~thereof of the fees~~ to the department of revenue in the manner and at the time provided by 10-4-204.

(2) (a) If a provider *or seller* required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber, *as defined in 10-4-101(21)(a)*, fails to pay the fee on or before the last day of the month following the end of each calendar quarter, the department of revenue shall add to the amount of the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee plus any unpaid penalties and interest. Interest is computed from the date the fee is due until the date of payment.

(b) The department of revenue may waive the penalty if the provider *or seller* establishes that the failure to pay on time was due to reasonable cause and was not due to neglect.

(3) (a) When a deficiency is determined and the additional fee becomes final, the department of revenue shall mail a notice and demand for payment to the provider *or seller*. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(4) The 10% penalty provided for in subsection (3)(b) may be waived by the department of revenue if the provider *or seller* establishes that the failure to pay the proper amount of fees was due to reasonable cause and was not due to neglect.

(5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued ~~thereon~~ *on the delinquent amount*. The warrant is governed by the provisions of Title 15, chapter 1, part 7.”

**Section 10.** Section 10-4-212, MCA, is amended to read:

**“10-4-212. Provider or seller considered a taxpayer under provisions for fee.** Unless the context requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and procedures relating thereto to those provisions apply to this part as if the fee were a tax imposed upon or measured by net income. The provisions apply to the subscriber, *as defined in 10-4-101(21)(a)*, liable for the fee and to the provider or seller required to collect the fee. Any amount collected and required to be remitted to the department of revenue is considered a tax upon the provider required to collect it, and that provider or seller is considered a taxpayer.”

**Section 11.** Section 10-4-305, MCA, is amended to read:

**“10-4-305. Distribution of 9-1-1 systems account by department.**

(1) Beginning July 1, 2018, and for each quarter after that until the first quarter of the 2023 fiscal year, the department shall distribute the total quarterly balance of the account provided for in 10-4-304(2)(a) as follows:

(a) each local and tribal government entity that hosts a public safety answering point must receive an allocation of the total quarterly balance of the account equal in proportion to the quarterly share received by the local and tribal government entity that hosts the public safety answering point during the 2017 fiscal year;

(b) each local and tribal government entity that hosts a public safety answering point must receive an allocation in accordance with subsection (1)(a). The allocation may vary from the amount distributed during the 2017 fiscal year based on the amount collected by the department of revenue in accordance with 10-4-201(1)(a) and 10-4-201(1)(c).

(2) Beginning July 1, 2022, and in accordance with subsection (3), the department shall allocate and distribute the total quarterly balance of the account provided for in 10-4-304(2)(a) based on rules adopted by the department in accordance with 10-4-108(3).

(3) Within 1 year after the official final decennial census figures are available, the department shall update the rules establishing the quarterly allocation and distribution provided for in subsection (2) and allocate and distribute the quarterly balance for each quarter after that until the next update.”

**Section 12. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 10, chapter 4, part 2, and the provisions of Title 10, chapter 4, part 2, apply to [sections 1 and 2].

**Section 13. 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 14. Effective date.** [This act] is effective January 1, 2022.

Approved May 10, 2021

## CHAPTER NO. 436

[SB 220]

AN ACT REVISING ASSAULT LAWS; PROVIDING THAT THE CRIME OF ASSAULT ON A PEACE OFFICER OR JUDICIAL OFFICER INCLUDES ASSAULT WITH WHAT APPEARS TO BE A WEAPON; AND AMENDING SECTION 45-5-210, MCA.

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

**Section 1.** Section 45-5-210, MCA, is amended to read:

**“45-5-210. Assault on peace officer or judicial officer.** (1) A person commits the offense of assault on a peace officer or judicial officer if the person purposely or knowingly causes:

(a) bodily injury to a peace officer or judicial officer;  
 (b) reasonable apprehension of serious bodily injury in a peace officer or judicial officer by use of:

(i) a weapon; or

(ii) *what reasonably appears to be a weapon;*

(c) bodily injury to a peace officer or judicial officer with a weapon; or

(d) serious bodily injury to a peace officer or judicial officer.

(2) (a) A person convicted of assault on a peace officer or judicial officer:

(i) under subsection (1)(a), (1)(b)(i), or (1)(c) shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined an amount not to exceed \$50,000; or

(ii) *under subsection (1)(b)(ii) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined an amount not to exceed \$50,000.*

(b) Except as provided in 46-18-222, a person convicted of assault on a peace officer or judicial officer under subsection (1)(d) shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term of not less than 5 years or more than 20 years, or both.

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

(a) “Judicial officer” has the meaning provided in 1-1-202 and includes the workers’ compensation judge, water court judges, and judges pro tempore.

(b) “Peace officer” has the meaning provided in 45-2-101 and includes a person, sworn or unsworn, who is responsible for the care or custody of an adult or youth offender.

(4) Criminal endangerment, negligent endangerment, and assault, as defined in 45-5-201, are not included as offenses of assault on a peace officer or judicial officer.”

Approved May 10, 2021

## CHAPTER NO. 437

[SB 269]

AN ACT GENERALLY REVISING LAWS RELATED TO MOBILE HOME PARKS; REVISING THE ALLOWED CAPITAL GAIN TAX EXEMPTIONS FOR THE SALE OF A MOBILE HOME PARK; REQUIRING THE NOTIFICATION OF MOBILE HOME PARK OWNERS; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 15-31-163 AND 17-7-502, MCA.

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

**Section 1. Notification of mobile home park owners.** (1) The department shall annually provide a list of the names and addresses of mobile home park owners to the board of housing provided for in 2-15-1814 for the purposes of this section.

(2) The board of housing shall annually and as necessary send notifications to mobile home park owners that facilitates, supports, and incentivizes mobile home park owners to utilize the benefits available pursuant to 15-31-163 and other benefits and reasons to sell a mobile home park to a tenants’ association, a mobile home park residents’ association, or a nonprofit organization.

(3) Costs associated with the mailing of notices required in subsection (2) may be paid for using funds available in the account provided for in [section 2].

(4) The provisions of 2-6-1017 do not apply to the requirements of this section.

**Section 2. Account for notification of mobile home park owners.**

(1) There is a special revenue account within the state special revenue fund established in 17-2-102 for the notification of mobile home park owners as required in [section 1].

(2) There must be deposited in the account all monetary contributions, gifts, and donations for the purposes of providing the notification required in [section 1].

(3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the board of housing established in 2-15-1814 and may only be used for those purposes provided in this section.

**Section 3.** Section 15-31-163, MCA, is amended to read:

**“15-31-163. Capital gain exclusion from sale of mobile home park.**

(1) ~~The following amount of the gain recognized~~ *Any capital gains income realized* from the sale or exchange of a mobile home park as defined in 70-33-103 is excluded from adjusted gross income or gross income under chapter 30 or 31:

(a) ~~100% of the recognized gain for a mobile home park with 50 or fewer lots; or~~

(b) ~~50% of the recognized gain for a mobile home park with more than 50 lots.~~

(2) To qualify for the exclusion under this section, the sale must be made to:

(a) a tenants' association or a mobile home park residents' association;

(b) a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that purchases a mobile home park on behalf of tenants' association or mobile home park residents' association;

(c) a county housing authority created under Title 7, chapter 15, part 21; or

(d) a municipal housing authority created under Title 7, chapter 15, parts 44 and 45.

(3) A corporation, an individual, a partnership, an S. corporation, or a disregarded entity qualifies for the exclusion under this section. If the exclusion allowed under this section is taken by a partnership, an S. corporation, or a disregarded entity, the exclusion must be attributed to shareholders, partners, or other owners using the same proportion used to report the partnership's, S. corporation's, or disregarded entity's income or loss for Montana income tax purposes.

(4) For the purpose of this section, “tenants' association” or “mobile home park residents' association” means a group of six or more tenants who reside in a mobile home park, have organized for the purpose of eventual purchase of the mobile home park, have established bylaws of the association, and have obtained the approval by vote of at least 51% of the residents of the mobile home park to purchase the mobile home park.

(5) Property subject to an income or corporate tax exclusion under this section is not eligible for a property tax exemption under Title 15, chapter 6, part 2, while the property is used as a mobile home park.”

**Section 4.** 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; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-1304; 10-4-301; [10-4-304;] 15-1-121; 15-1-218; [section 2]; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 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; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-416; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; 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 contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to

sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023, and pursuant to sec. 2, Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, is void for fiscal years 2018 and 2019; pursuant to sec. 31(2), Ch. 367, L. 2017, the inclusion of 10-4-301 terminates July 1, 2018, and the inclusion of 10-4-304 is effective July 1, 2018; and pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027.”

**Section 5. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [sections 1 and 2].

Approved May 10, 2021

## CHAPTER NO. 438

[SB 378]

AN ACT LEGALIZING MULTIPLE COMPETITOR SPORTS POOLS; INCLUDING MULTIPLE COMPETITOR IN THE DEFINITION OF SPORTS POOL; PROVIDING FOR A FEE; PROVIDING A DEFINITION; AMENDING SECTIONS 23-5-501 AND 23-5-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 23-5-501, MCA, is amended to read:

**“23-5-501. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) (a) *“Multiple competitor sports pool” means a sports pool in which three or more competitors simultaneously compete in a college or professional sports event or series of sports events. The term includes but is not limited to a sports event in which competitors are placed into a bracket.*

(b) *The term does not include multiple competitor sports pools utilizing any form of internet gambling as defined in 23-5-112.*

(1)(2) *“Sports pool” means a gambling activity, other than an activity governed under chapter 4 or chapter 5, part 2, of this title, in which a person wagers money for each chance to win money or other items of value based on the outcome of a sports event or series of sports events wherein the competitors in the sports event or series of sports events are natural persons or animals.*

(2)(3) *“Sports tab” means a folded or banded ticket with a face covered to conceal a combination of two numbers, with each number ranging from zero through nine.*

(3)(4) *“Sports tab game” means a gambling enterprise conducted on a card to which 100 sports tabs are attached that have 100 different combinations for which consideration in money is paid by the person purchasing each tab. A person may purchase a sports tab from the card for the chance to win money or other items of value on a sports event or series of sports events as provided in 23-5-503.”*

**Section 2.** Section 23-5-512, MCA, is amended to read:

**“23-5-512. Sports pool design – multiple competitor sports pool – department rules.** (1) (a) *Except as provided in subsection (2), a sports pool must be designed to ensure that:*

(a)(i) there is at least one winner from among the participants in the pool; and

(b)(ii) each participant has an equal chance to win the pool.

(2)(b) Competitors in a sports event or series of sports events must be randomly assigned to each participant in the sports pool.

(2) (a) *A multiple competitor sports pool must be designed to ensure that:*

(i) *there is at least one winner, but there may be categories of winners among the participants in the pool; and*

(ii) *a participant's chance to win the pool may be based on the participant's relative skill in selecting competitors in a sports event or series of sports events.*

(b) *Nothing in subsection (2)(a)(ii) requires competitors in a multiple competitor sports pool to be randomly assigned to a participant in a sports pool.*

(3) The department shall by rule describe the types of sports pools authorized by this part. Variations in the authorized sports pools must be submitted to the department for review and approval before they are made available for public play. *The department may charge a nominal fee to review variations in the authorized sports pools.*

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

Approved May 10, 2021

## CHAPTER NO. 439

[SB 392]

AN ACT PROVIDING FOR THE GRANT OF RIGHT-OF-WAY BY THE MONTANA DEPARTMENT OF TRANSPORTATION FOR CERTAIN ELIGIBLE PROJECTS ALONG INTERSTATE HIGHWAYS; ESTABLISHING CRITERIA; SETTING TIMELINES FOR DEPARTMENT REVIEW; REQUIRING AN APPLICANT TO PAY THE DEPARTMENT CERTAIN FEES; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Interstate right-of-way -- department role.** (1) The department of transportation may grant a right-of-way use agreement for the use of longitudinal right-of-way along interstate highways in the state for eligible projects that:

(a) provide evidence that construction and completion will result in a significant investment, a documented positive significant fiscal impact, or both, to the Montana economy within the first year of operation;

(b) are in the public interest; and

(c) are approved by the federal highway administration.

(2) To request a right-of-way use agreement in accordance with this section, the owner of an eligible project must submit an application to the department that demonstrates compliance with subsection (1). The department shall work with the applicant and the federal highway administration throughout the review process and approve or deny the application within 90 days of approval by the federal highway administration.

(3) The department and the applicant shall agree to the payment of the fair market value of the portion of the right-of-way where the project will be located prior to the right-of-way use agreement being granted.

(4) The department may adopt rules necessary for the administration of this section, including application fees to be paid by an applicant seeking a right-of-way use agreement and any rules necessary to ensure the state is not prevented from receiving federal funds for highway purposes.

(5) For the purposes of this section:

(a) “Eligible project” means a pipeline or fiber optic or other communications-type cables and associated infrastructure.

(b) “Public interest” is determined by federal highway administration guidance.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, and the provisions of Title 60 apply to [section 1].

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

Approved May 10, 2021

## CHAPTER NO. 440

[SB 396]

AN ACT GENERALLY REVISING LAWS APPLYING TO BOILERS; CREATING A LICENSE FOR A LIMITED LOW-PRESSURE ENGINEER LICENSE; CREATING LICENSE REQUIREMENTS; ALLOWING THE DEPARTMENT OF LABOR AND INDUSTRY TO ASSESS FEES FOR LICENSING; PROVIDING INSPECTION REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY TO MAKE RULES PERTAINING TO LICENSURE AND LICENSURE FEES; AMENDING SECTIONS 50-74-303 AND 50-74-304, MCA; AND REPEALING SECTIONS 50-74-203 AND 50-74-219, MCA.

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

**Section 1. Qualifications of boiler inspectors – fees for inspections.**

(1) A person employed by the department to enter premises and inspect boilers or machinery subject to this chapter must:

(a) have 5 years of actual experience in the operation or inspection of boilers or steam-driven equipment; and

(b) hold or possess the necessary qualifications to obtain either a stationary engineer’s license or a commission issued by the national board of boiler and pressure vessel inspection code.

(2) The department shall establish a schedule of fees and may collect fees for the inspection of boilers prior to the issuance of a boiler operating certificate. The fees must be commensurate with the cost of the inspections and with appropriations for other purposes.

**Section 2.** Section 50-74-303, MCA, is amended to read:

**“50-74-303. Engineer’s license classifications.** (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into ~~five~~ *six* classes, including first-class engineers, second-class engineers, third-class engineers, agricultural-class engineers, and low-pressure engineers, *and limited low-pressure engineers*.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into ~~five~~ *six* classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure,

water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 150 pounds per square inch gauge saturated steam pressure and or not in excess of 150 horsepower per hour and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Agricultural-class engineers are licensed to operate steam boilers that operate not in excess of 150 pounds per square inch saturated steam pressure and that:

(i) are not operated for more than 6 months of the year; and  
(ii) are not operated for purposes other than the harvesting or processing of agricultural products.

(e) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature.

(f) *Limited low-pressure engineers are licensed to operate hot water heating boilers not in excess of 30 pounds per square inch gauge pressure and 210 degrees F temperature and hot water supply boilers not in excess of 160 pounds per square inch gauge pressure and 210 degrees F temperature.*

**Section 3.** Section 50-74-304, MCA, is amended to read:

**“50-74-304. Requirements for engineer’s license.** Each applicant for an engineer’s license must be physically and mentally capable of performing the required duties and must meet the following minimum requirements for the class of engineer’s license for which application is being made:

(1) *Except as provided in subsection (8), an applicant for a limited low-pressure engineer’s license must be 18 years of age or older, must have 2 months’ full-time experience in the operation of a boiler in this classification under an engineer who holds a valid limited low-pressure or higher license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.*

(1)(2) Except as provided in subsection (6) (7), an applicant for a low-pressure engineer’s license must be 18 years of age or older, must have at least 3 months’ full-time experience in the operation of a boiler in this classification under an engineer who holds a valid low-pressure or higher license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.

(2)(3) Except as provided in subsection (6) (7), an applicant for an agricultural-class engineer’s license must be 18 years of age or older, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.

(3)(4) Except as provided in subsection (6) (7), an applicant for a third-class engineer’s license must be 18 years of age or older, must have at least 6 months’ full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.

~~(4)~~(5) An applicant for a second-class engineer's license must be 18 years of age or older and:

(a) must have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department; or

(b) must hold a valid third-class engineer's license, must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department.

~~(5)~~(6) An applicant for a first-class engineer's license must be 18 years of age or older and:

(a) must have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department;

(b) must hold a valid second-class engineer's license, must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department; or

(c) must hold a valid third-class engineer's license, must have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department.

~~(6)~~(7) As an alternative to the requirements of subsections ~~(1)~~ (2) through ~~(3)~~ (4), an applicant who is 18 years of age or older may apply for and be issued a license for any of the three classes of licenses provided for in subsections ~~(1)~~ (2) through ~~(3)~~ (4) if:

(a) the applicant completes a training course acceptable to the department that is specific to the class of boiler license sought by the applicant and successfully passes a written examination administered by the department that is specific to the class of boiler license sought by the applicant; and

(b) an engineer with a license at least equal to the class of boiler license sought by the applicant informs the department that the applicant has worked with the type of boiler for which a license is sought under the engineer's supervision for a minimum of 40 hours and that the applicant is competent to operate a boiler of the class for which licensure is sought by the applicant.

(8) *As an alternative to the requirements of subsection (1), an applicant who is 18 years of age or older may apply for and be issued a limited low-pressure license provided for in subsection (1) if:*

*(a) the applicant completes a 6-hour training course acceptable to the department that is specific to a limited low-pressure license sought by the applicant; and*

(b) *an engineer with a license at least equal to the class of license sought by the applicant informs the department that the applicant has worked with the type of boiler for which a license is sought under the engineer's supervision for a minimum of 8 hours and that the applicant is competent to operate a boiler of the class for which licensure is sought by the applicant.*"

**Section 4. Repealer.** The following sections of the Montana Code Annotated are repealed:

50-74-203. Qualifications of boiler inspectors.

50-74-219. Fee for inspection.

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 74, and the provisions of Title 50, chapter 74, apply to [section 1].

Approved May 10, 2021

## CHAPTER NO. 441

[SB 87]

AN ACT GENERALLY REVISING LEGAL OBLIGATIONS OF COAL-FIRED POWER PLANT OWNERS RELATED TO PUBLIC WATER SUPPLIES; REQUIRING A WATER FEASIBILITY STUDY BE COMPLETED BY THE OWNERS OF A COAL-FIRED GENERATING UNIT TO ENSURE ACCESS TO A WATER SUPPLY; AMENDING SECTION 75-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Water feasibility study.** (1) On or before November 1, 2022, the owners of a coal-fired generating unit shall complete a water feasibility study in accordance with subsection (2). Costs of completing the study must be shared among the owners based on each owner's individual ownership interest in the coal-fired generating unit.

(2) The study required in subsection (1) must include:

(a) planning to ensure a local government attendant to a coal-fired generating unit is able to access the local government's water rights and related infrastructure in the event of closure of the coal-fired generating unit;

(b) an estimation of potential conveyance costs that could be incurred by a local government, for up to a 30-year timeline following closure of a facility; and

(c) recommendations, developed in consultation with the community attendant to a coal-fired generating unit, for meeting financial obligations necessary to ensure the affected local government is able to maintain its water supply and water rights.

(3) The study must be submitted to the department and included in remediation plans required in accordance with this part.

**Section 2.** Section 75-8-103, MCA, is amended to read:

**"75-8-103. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Affected property" means the property owned by or under the control of an owner that is affected by a coal-fired generating unit, including:

(i) land, surface water, or ground water directly affected by the coal-fired generating unit, associated impoundments, disposal and waste operations, buildings, structures, or other improvements or operations infrastructure; and

(ii) areas affected by activities necessary to the closure and dismantling of the coal-fired generating unit.

(b) The term does not include:

(i) land, water, or air affected or potentially affected by emissions from the operation of a coal-fired generating unit; or

(ii) the mining of coal at an underground or strip mine and used at the coal-fired generating unit.

(2) “Applicable legal obligations” means any applicable state or federal environmental laws, including but not limited to the Montana Water Quality Act, rules regarding disposal of coal combustion residuals from electric utilities, the Montana Major Facility Siting Act, and other applicable laws administered by the department in accordance with Title 75. The term includes:

(a) any consent order or settlement entered into by the department and an operator or owner imposing obligations to undertake remediation actions at the coal-fired generating unit or affected property; *and*

(b) *a water feasibility study completed in accordance with [section 1].*

(3) “Coal-fired generating unit” means an individual unit of a coal-fired electrical generating facility located in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts.

(4) “Department” means the department of environmental quality provided for in 2-15-3501.

(5) “Operator” means the person engaged in operating or undertaking remediation actions at a coal-fired generating unit. An operator may or may not be an owner.

(6) “Owner” means a person who has a legal or equitable interest in property subject to this part or the person’s legal representative.

(7) “Person” means an individual, partnership, corporation, association, or other legal entity or any political subdivision of the state or federal government.

(8) “Reasonably anticipated future uses” means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of a site where a coal-fired generating unit is located;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from an operator or owner, or both, of a coal-fired generating unit, affected property owners, and local planning officials.

(9) “Remediation” means all actions required by an applicable legal obligation directed exclusively toward achieving a degree of cleanup required in accordance with 75-8-107.

(10) “Retired” or “retire” means the complete and permanent closure of a coal-fired generating unit. Retirement occurs on the date that the coal-fired generating unit ceases combustion of fuel and permanently ceases to generate electricity.”

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 8, part 1, and the provisions of Title 75, chapter 8, part 1, apply to [section 1].

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

**Section 6. Applicability.** [This act] applies to remediation plans filed on or after [the effective date of this act].

Approved May 10, 2021

## CHAPTER NO. 442

[SB 114]

AN ACT REVISING THE HOMESTEAD EXEMPTION; INCREASING THE HOMESTEAD VALUE LIMITATION; PROVIDING FOR ANNUAL INCREASES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 70-32-104, MCA, is amended to read:

**“70-32-104. Limitation on value.** (1) A homestead may not exceed ~~§250,000 in value~~ *the value provided in subsection (3)*. In a proceeding instituted to determine the value of the homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as it appears on the last-completed assessment roll preceding the institution of the proceeding is prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, the claimant is limited to an exemption amount proportional to the claimant’s undivided interest.

(3) (a) *The department of revenue shall adopt administrative rules setting the homestead value limit.*

(b) *In 2021, the homestead value limit is \$350,000.*

(c) *The homestead value limit must increase by 4% every calendar year after 2021.”*

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

Approved May 10, 2021

## CHAPTER NO. 443

[SB 134]

AN ACT REVISING BOARD OF INVESTMENT LOANS FOR COAL-FIRED GENERATION DECOMMISSIONING AND REMEDIATION; AMENDING SECTION 17-6-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 17-6-308, MCA, is amended to read:

**“17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (8) of this section and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board’s powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule

for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall allow the board of housing to administer \$50 million of the permanent coal tax trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.

(6) The board shall allow the board of housing to administer \$15 million of the permanent coal tax trust fund for the purpose of providing loans for the development and preservation of homes and apartments to assist low-income and moderate-income persons with meeting their basic housing needs pursuant to 90-6-137.

(7) (a) Subject to subsections (7)(b) and (7)(c), the board may make working capital loans from the permanent coal tax trust fund to an owner of a coal-fired generating unit.

(b) Loans may be provided in accordance with subsection (7)(a) to an owner to finance:

(i) the everyday operations and required maintenance of a coal-fired generating unit of which an owner has a shared interest;

(ii) the purchase of an additional interest in a coal-fired generating unit of which an owner has a shared interest;

(iii) the purchase of coal to use at a coal-fired generating unit or improvements necessary to utilize coal from a different source at a coal-fired generating unit. When considering loan requests made under this subsection (7)(b)(iii), the board shall give preference to requests that allow for utilization of coal resources located in Montana or allow for improvements to utilize coal resources located in Montana that are determined to be economically feasible.

(iv) the purchase of electric transmission lines and associated facilities of a design capacity of 500 kilovolts or more primarily used to transmit electricity generated by a coal-fired resource; or

(v) *costs related to decommissioning and remediation of a coal-fired generating unit or affected property to meet applicable legal obligations as defined in 75-8-103; or*

~~(v)~~(vi) any combination of subsections (7)(b)(i) through ~~(7)(b)(iv)~~ (7)(b)(v).

(c) The board may charge a working capital loan application fee of up to \$500.

(8) The board may make loans from the permanent coal tax trust fund to a city, town, county, or consolidated city-county government impacted by the closure of a coal-fired generating unit to secure and maintain existing infrastructure.

(9) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(10) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund.”

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

Approved May 10, 2021

## CHAPTER NO. 444

[SB 147]

AN ACT GENERALLY REVISING LAWS RELATED TO CAPITAL ENHANCEMENT PROGRAMS TO PROMOTE ENERGY CONSERVATION MEASURES; AUTHORIZING LOCAL GOVERNMENTS TO ADOPT COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAMS THROUGH DISTRICTS TO PROMOTE ENERGY CONSERVATION MEASURES; ESTABLISHING THE COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS ACT OF MONTANA; PROVIDING FOR THE ADMINISTRATION OF COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAMS THROUGH THE MONTANA FACILITY FINANCE AUTHORITY AND LOCAL GOVERNMENTS; PROVIDING COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAM PLANNING REQUIREMENTS; ESTABLISHING PROCEDURES FOR LOCAL GOVERNMENT DEVELOPMENT OF COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAMS; ALLOWING FOR VOLUNTARY ASSESSMENTS; PRESCRIBING THE POWERS AND DUTIES OF THE GOVERNING BODIES OF LOCAL GOVERNMENTS AND THE AUTHORITY RELATED TO COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAMS; ESTABLISHING CONTRACT AND LABOR REQUIREMENTS FOR CONTRACTS; ALLOWING LOCAL GOVERNMENTS TO JOINTLY ESTABLISH COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAMS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 90-7-202 AND 90-7-211, 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 8] may be cited as the “Commercial Property-Assessed Capital Enhancements Act of Montana”.

**Section 2. Definitions.** As used in [sections 1 through 8], unless the context requires otherwise, the following definitions apply:

(1) “Authority” means the Montana facility finance authority created in 2-15-1815.

(2) “Commercial property-assessed capital enhancements program” or “program” means a program established in accordance with [sections 1 through 8].

(3) “District” means a district that is established under [sections 1 through 8] by a local government and that lies within the local government’s jurisdictional boundaries. A local government may create more than one district under a program.

(4) “Energy conservation measure” means a permanent cost-effective energy improvement fixed to real property, including new construction, and intended to decrease energy or water consumption and demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature. The term includes but is not limited to:

(a) insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;

(b) storm windows and doors, including multiglazed windows and doors, heat-absorbing or heat-reflective glazed windows, coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) automated energy control systems;

(d) heating, ventilating, or air-conditioning and distribution system modifications or replacements;

(e) caulking, weather-stripping, or air sealing;

(f) replacement or modification of lighting fixtures to reduce the energy use of the lighting system;

(g) energy recovery systems;

(h) daylighting systems;

(i) installation or upgrades of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;

(j) fuel source changes that result in cost savings;

(k) measures to reduce the usage of water or to increase the efficiency of water usage; and

(l) any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the governing body.

(5) “Energy conservation project” means the installation or modification of an energy conservation measure or the acquisition, installation, or improvement of a renewable energy system.

(6) “Governing body” means the legislative authority of a local government.

(7) “Local government” means a county, city, town, or a consolidated city-county.

(8) (a) “Person” means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust that is organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination of individuals, firms, partnerships, associations, corporations, unincorporated joint ventures, or trusts.

(b) The term does not include a local government.

(9) “Real property” means a privately owned commercial or industrial facility, covered multifamily housing accommodation as defined in 49-2-305(6), or agricultural property.

(10) “Record owner” means the person or persons possessing the most recent fee title as shown by the records of the county clerk and recorder.

(11) “Renewable energy” has the meaning provided in 15-24-3102.

(12) “Renewable energy system” means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that uses one or more forms of renewable energy to generate electricity

or to reduce the use of nonrenewable energy. The term includes a biomass stove but does not include an incinerator or a digester.

**Section 3. Duties of authority related to community property-assessed capital enhancements program – rulemaking.**

(1) As resources allow, the authority shall provide administrative support to local governments for the administration of the commercial property-assessed capital enhancements program and establish a plan in accordance with [section 5].

(2) If the authority adopts rules in accordance with 90-7-202 to administer the commercial property-assessed capital enhancements program, the authority shall consult with local and county governments and the commercial lending industry, including bank and credit union representatives, on the content of the rules.

(3) The authority shall provide a report to the legislature in accordance with 5-11-210 describing the fees related to the program, administrative costs, the number of properties that are part of a commercial property-assessed capital enhancements program, and the scope of projects in the program:

(a) in 2024; and

(b) every 5 years after the report is initially provided in subsection (3)(a).

**Section 4. Program authorized – contracts.** (1) In accordance with [sections 5 and 6], a governing body may establish a commercial property-assessed capital enhancements program and may create a district or districts under the program.

(2) (a) The governing body may enter into a contract with a record owner of real property within a district to finance one or more energy conservation projects on the real property included in a district in accordance with [sections 1 through 8].

(b) The contract may provide for the repayment of the cost of an energy conservation project through an assessment in accordance with [section 7] on real property. The financing to be repaid through assessments must be provided by a third party.

(c) Financing may include the cost of materials and labor necessary for the installation or modification of energy conservation projects, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees incurred by the record owner for the energy conservation project on a specific or pro rata basis, as determined by the governing body.

**Section 5. Elements of program plan – contract requirements.**

(1) Prior to establishing a program in accordance with [section 6], the authority shall prepare a program plan. Subject to subsections (2) through (4), the program plan must include:

(a) provisions for marketing the program and providing participant education;

(b) the types of energy conservation projects that may be financed under the program;

(c) options for raising capital to finance energy conservation projects under the program. Options may include but are not limited to owner-arranged financing from a commercial lender. If owner-arranged financing is used, the governing body may impose an assessment pursuant to [section 7] and make payments to the authority, and the authority will distribute those payments to the commercial lender.

(d) quality assurances and antifraud measures;

(e) minimum requirements for a contractor to complete an energy conservation project;

(f) clearly defined work standards for contractors;

(g) contractor management systems and procedures designed to monitor contractor performance and to manage, track, and resolve consumer complaints; and

(h) a description of the proposed financial arrangement and contract terms between the local government and record owners pursuant to subsection (3).

(2) (a) A program plan for energy conservation projects must include an energy analysis completed by a third party to determine cost and energy savings.

(b) Energy savings calculations and analysis completed in accordance with subsection (2)(a) must be completed by a licensed or certified building professional approved by the authority.

(c) When an energy conservation project is completed, the contractor who completed the project shall submit written verification to the authority that the energy conservation project was properly installed and is operating as intended.

(3) A proposed financial arrangement must be included in a program plan in accordance with subsection (1)(c) and must include:

(a) application, administration, or other program fees that will be charged to record owners participating in the program that will be used to finance costs incurred by the authority, local government, or both as a result of the program;

(b) a requirement that a contract between the governing body and a record owner is invalid and unenforceable unless the holder of a mortgage, trust indenture beneficiary, or loan servicer provides the governing body with each of the following:

(i) an executed subordination agreement, properly notarized and executed within 3 months prior to the application for a contract;

(ii) a record of the subordination agreement from the office of the county clerk and recorder in the county where the property is located; and

(iii) a secretary's certificate or substantially similar certification that the person who executed the subordination agreement is authorized to sign such an agreement on behalf of the mortgage holder, trust indenture beneficiary, or loan servicer; and

(c) a model contract between a governing body and a record owner containing the terms and conditions of financing and an assessment that meets the requirements of [section 7] under the program. The model contract must include full disclosure of costs, including the effective interest rate of the assessment in accordance with [section 7], any administrator fees, the estimated payment schedule, and the placement of a lien on the real property.

(4) (a) Prior to a local government and a record owner for a commercial property-assessed capital enhancements project entering into a contract under a program established pursuant to [section 6], the authority shall obtain independent verification from the record owner that the record owner understands and accepts the terms of the contract and shall make the verification available to the local government.

(b) The contract must allow the record owner to cancel the contract within 3 business days of signing the contract.

(c) The contract must include full disclosure that by entering into the contract, the record owner may incur a property tax lien on the real property included under the contract.

(5) The contract must include requirements that contractors and any subcontractors use a skilled and trained workforce. Contracts signed must require contractors and subcontractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of

the projects, if the Montana residents have substantially equal qualifications to those of nonresidents.

**Section 6. Establishment of program.** (1) To establish a commercial property-assessed capital enhancements program, a governing body shall:

(a) adopt a resolution of intent that includes:

(i) a statement of intent to establish a commercial property-assessed capital enhancements program describing the role of the governing body and the role of the authority in administering the program;

(ii) the types of energy conservation projects that may be included in the program;

(iii) a reference to the program plan required by [section 5] and a location where the plan is available for public inspection; and

(iv) the time and place for a public hearing on the proposed program;

(b) hold a public hearing at which the public may comment on the proposed program and the program plan required by [section 5]; and

(c) adopt a resolution establishing the program and setting the terms and conditions of the program, including:

(i) how the governing body will meet the program plan requirements established by the authority in [section 5]. To meet the requirement of this subsection (1)(c)(i), the resolution may incorporate a program plan or an amended version of a program plan by reference.

(ii) a description of the aspects of the program that may be changed without a public hearing and the aspects that may be changed only after a public hearing;

(iii) identification of an official authorized to enter into a program contract on behalf of the program with entities providing funding for the program; and

(iv) identification of an official authorized to enter into a program contract on behalf of the governing body with record owners.

(2) A commercial property-assessed capital enhancements program may be changed by resolution of the governing body. Adoption of the resolution must be preceded by a public hearing if required pursuant to subsection (1)(c)(ii).

**Section 7. Assessments.** (1) (a) A local government may impose an assessment under a commercial property-assessed capital enhancements program pursuant to a written contract with the record owner of the real property to be assessed.

(b) The term of the assessment may not exceed the useful life of an energy conservation project paid for by the assessment.

(2) Before entering into a contract with a record owner under a program, the local government shall verify that:

(a) delinquent taxes, special assessments, or water or sewer charges are not due on the real property; and

(b) delinquent assessments on the real property under a commercial property-assessed capital enhancements program are not due.

(3) (a) An assessment imposed under a commercial property-assessed capital enhancements program, including any interest on the assessment and any penalty, constitutes a program lien against the real property on which the assessment is imposed from the date of the assessment until the assessment, including any interest or penalty, is paid in full. The lien is for outstanding assessments only, runs with the real property, and has the same priority and status as other property tax and assessment liens.

(b) A governing body has the same rights in the case of delinquency in the payment of an assessment as it does with respect to delinquent property taxes. When the assessment, including any interest and penalty, is paid, the lien must be removed from the real property.

(4) (a) Except as provided in subsection (4)(b), installments of assessments due under a program must be included in each tax bill issued under 15-16-101 and must be collected at the same time and in the same manner as taxes collected under Title 15, chapter 16.

(b) Installments may be billed and collected as provided in a special assessment ordinance of general applicability adopted by a local government.

**Section 8. Joint programs.** (1) A local government may join with another local government or with any person by contract or otherwise to implement a commercial property-assessed capital enhancements program in whole or in part.

(2) If a commercial property-assessed capital enhancements program is implemented jointly by two or more local governments, a single public hearing held jointly by the local governments meets the requirements of [section 6].

**Section 9.** Section 90-7-202, MCA, is amended to read:

**“90-7-202. Powers of authority.** The authority may:

- (1) sue and be sued;
- (2) have a seal;
- (3) *except as provided in [section 3(2)]*, adopt all procedural and substantive rules necessary for the administration of this chapter;
- (4) *except as provided in subsection (20)*, issue bonds or incur other debt as described in this chapter, including the issuance of notes or refunding bonds;
- (5) except as provided in 17-6-308, invest any funds that are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in an enterprise fund to the credit of the authority to be used to carry out the purposes of this chapter;
- (6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of this chapter;
- (7) participate with any financial institution in the purchase or guarantee of any loan or obligation;
- (8) *except as provided in subsection (20)*, issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;
- (9) enter into agreements or make advance commitments to ensure repayments required by loan agreements made by a lender. These agreements are subject to terms and conditions established by the authority.
- (10) establish programs to make, sell, purchase, or insure loans to finance the costs of eligible facilities from any funds;
- (11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;
- (12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under this chapter;
- (13) with regard to property:
  - (a) *except as provided in subsection (20)*, acquire real or personal property or any right, interest, or easement in real or personal property by gift, purchase, transfer, foreclosure, lease, or otherwise;
  - (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of property;
  - (c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and

(h) operate, manage, lease, dispose of, and otherwise deal with property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes if that action is consistent with any agreement with the holders;

(14) service, contract, and pay for the servicing of loans;

(15) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of eligible facilities whenever considered appropriate;

(16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Except as provided in 17-6-308, the interest, fees, and charges must be deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the authority, including operating and administrative expenses, reasonable allowances for losses that may be incurred, and bond financing costs, and to provide funds to make loans to finance the costs of eligible facilities or to make grants for the purposes described in 90-7-211(2)(e).

(18) make loans pursuant to 17-6-308;

(19) establish program parameters for loan or grant approval by authority staff; and

*(20) perform its duties to administer commercial property-assessed capital enhancements programs in accordance with [sections 1 through 8]. The authority's power is limited strictly to the administration of the commercial property-assessed capital enhancements program in accordance with [sections 1 through 8], and the authority may not provide financing, acquire real property, or issue bonds, other than as a conduit issuer of bonds with the underlying obligations to be assigned on issuance, in its administration of the commercial property-assessed capital enhancements program. Nothing in this subsection may be construed as limiting the ability of the authority to provide financial or other services otherwise allowed under this section to property-assessed capital enhancements programs.*

~~(20)~~(21) perform any other acts necessary and convenient to carry out the purposes of this chapter.”

**Section 10.** Section 90-7-211, MCA, is amended to read:

**“90-7-211. Necessary expenses – fees.** (1) ~~Except as provided in [section 5(3)(a)],~~ all expenses of the authority incurred in carrying out the provisions of this chapter are payable solely from funds provided under the authority of this chapter. Liability may not be incurred by the authority beyond the extent to which money has been provided under this chapter, except for

the purposes of meeting the necessary expenses of initial organization and operation and until the date that the authority derives money from funds provided under this chapter. The authority may borrow money for necessary expenses of organization and operation. The borrowed money must be repaid within a reasonable time after the authority receives funds provided for under this chapter.

(2) When an application is made to the authority by any participating institution for financial assistance to provide for its eligible facilities, the application may be accompanied by an initial planning service fee in an amount determined by the authority. The initial planning service fee may be included in the cost of the eligible facilities to be financed. In addition to the initial fee, an annual planning service fee may be paid to the authority by each participating institution in an amount determined by the authority. The annual planning service fee may be paid on the dates or in installments that are satisfactory to the authority. The fees must be used for:

(a) necessary expenses to determine the need for eligible facilities in the area concerned, and to that end, the authority may use recognized voluntary and official health planning organizations and agencies at local, regional, and state levels;

(b) necessary administrative, operating, and financing expenses;

(c) reserves for anticipated future expenses or loan losses;

(d) loans to finance the costs of eligible facilities; and

(e) grants to institutions to assist in determining eligibility for or compliance with government programs.

(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need for and location of any eligible facility for which application is being made or for other services or surveys that the authority considers necessary to carry out the purposes of this chapter.”

**Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 12. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 8].

**Section 13. Effective date.** [This act] is effective January 1, 2022.

Approved May 10, 2021

## CHAPTER NO. 445

[SB 172]

AN ACT GENERALLY REVISING EMERGENCY AND DISASTER LAWS; PROHIBITING DISCRIMINATORY ACTION BY THE GOVERNMENT; PROVIDING FOR CIVIL RELIEF; PROVIDING DEFINITIONS; AMENDING SECTIONS 10-3-101, 10-3-102, AND 10-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*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 ensure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state 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 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, local governments, and tribal 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, its political subdivisions, and tribal governments 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 state, tribal government, or federal emergency or disaster declarations; *and*

(11) *ensure the continuity of religious services as essential services to the welfare of the people of the state.*"

**Section 2.** Section 10-3-102, MCA, is amended to read:

**"10-3-102. Limitations.** Parts 1 through 4 of this chapter may not be construed to give any state, local, or interjurisdictional agency or public official authority to:

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

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

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or any personnel of

those entities when on active duty, but state, local, and interjurisdictional disaster and emergency plans must place reliance upon the forces available for performance of functions related to emergencies and disasters; or

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

(5) *limit religious services, except that religious organizations may be required to comply with neutral health, safety, or occupancy requirements that:*

(a) *are applicable to all organizations or businesses providing essential services; and*

(b) *do not impose a substantial burden on religious services, unless in this instance the burden is necessary to further a compelling government interest and is the least restrictive means of furthering that interest.*

**Section 3.** 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) “All-hazard incident management assistance team” means a team that includes any combination of personnel representing local, state, or tribal entities that has been established by the state emergency response commission provided for in 10-3-1204 for the purpose of local incident management intended to mitigate the impacts of an incident prior to a disaster or emergency declaration.

(2) “Civil defense” means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(3) “Department” means the department of military affairs.

(4) “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.

(5) “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.

(6) “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.

(7) “Division” means the division of disaster and emergency services of the department.

(8) “Emergency” means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(9) (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.

(10) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(11) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(12) "*Religious organization*" means:

(a) *a house of worship, including but not limited to churches, mosques, shrines, synagogues, and temples; or*

(b) *a religious group, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a house of worship.*

(13) "*Religious services*" means *a meeting, gathering, or assembly of multiple persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that involve the exercise of religion.*

~~(14)~~(14) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

~~(15)~~(15) "Tribal government" means the government of a federally recognized Indian tribe within the state of Montana.

~~(16)~~(16) "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 4. Claim or defense against state action – remedies – limitations.** (1) A religious organization may assert a violation of 10-3-102 or [section 5] as a claim against a state, local, or interjurisdictional agency or public official in any judicial or administrative proceeding or as a defense in any judicial proceeding.

(2) In any civil action based on this section, the court may grant:

(a) declaratory relief;

(b) injunctive relief;

(c) compensatory damages for pecuniary and nonpecuniary losses;

(d) reasonable attorney fees and costs; and

(e) any other appropriate relief.

(3) A religious organization may not bring an action to assert a claim under this section later than 2 years after the date that it knew or could have known that a discriminatory action or other violation occurred.

**Section 5. Protections against government discrimination.** An agency or a political subdivision of the state may not take discriminatory action against a religious organization wholly or partially on the basis that the organization is religious, operates or seeks to operate during an emergency or disaster, and engages in the exercise of religion as protected under the first amendment to the United States constitution. Discriminatory action means to:

(1) alter in any way the tax treatment of a religious organization, or cause any tax, fine, civil or criminal penalty, payment, damages award, or injunction to be assessed against a religious organization;

(2) deny, delay, revoke, or otherwise make unavailable an exemption from taxation for a religious organization; or

(3) withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any grant, contract, scholarship, license, accreditation, certification, entitlement, or other benefit under any government program.

**Section 6. Codification instruction.** [Sections 4 and 5] are intended to be codified as an integral part of Title 10, and the provisions of Title 10 apply to [sections 4 and 5].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved May 10, 2021

## CHAPTER NO. 446

[SB 212]

AN ACT REVISING LAWS RELATED TO PROPERTY TAX BILLS; REQUIRING A PROPERTY TAX BILL TO BE ITEMIZED BY MILL LEVY AND INDICATE WHICH LEVIES ARE VOTED LEVIES; REQUIRING PROPERTY TAX COMPARISON INFORMATION FOR THE COUNTY TO BE PROVIDED WITH NOTICES OF REAPPRAISAL AND PUBLISHED IN NEWSPAPERS; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 15-7-111 AND 15-16-101, MCA.

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

**Section 1.** Section 15-7-111, MCA, is amended to read:

**“15-7-111. Periodic reappraisal of certain taxable property.** (1) The department shall administer and supervise a program for the reappraisal of all taxable property within class three under 15-6-133, class four under 15-6-134, and class ten under 15-6-143 as provided in this section. All other property must be revalued annually. Beginning January 1, 2015, all property within class three and class four must be revalued every 2 years, and all property within class ten must be revalued every 6 years.

(2) The department shall value newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1) and shall phase in the value of class ten property. The department shall adopt rules for determining the assessed valuation of new, remodeled, or reclassified property within the same class and the phased-in value of class ten property.

(3) The reappraisal of class three and class four property is complete on December 31 of every second year of the reappraisal cycle, and the reappraisal of class ten property is complete on December 31 of the sixth year of the reappraisal cycle. The amount of the change in valuation from the base year for class ten property must be phased in each year at the rate of 16.66% of the change in valuation.

(4) During the second year of each reappraisal cycle, the department shall provide the revenue interim committee with a report, in accordance with 5-11-210, of tax rates for the upcoming reappraisal cycle that will result in taxable value neutrality for each property class.

(5) The department shall administer and supervise a program for the reappraisal of all taxable property within classes three and four. The department shall adopt a reappraisal plan by rule. The reappraisal plan adopted must provide that all class three and class four property in each county is revalued by January 1 of the second year of the reappraisal cycle, effective for January 1 of the following year, and each succeeding 2 years, and must provide that all class ten property in each county is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding 6 years. The resulting valuation changes for class ten property must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phase in for class ten property each year is 16.66%.

(6) (a) In completing the appraisal or adjustments under subsection (5), the department shall, as provided in the reappraisal plan, conduct individual property inspections, building permit reviews, sales data verification reviews, and electronic data reviews. The department may adopt new technologies for recognizing changes to property.

(b) The department shall conduct a field inspection of a sufficient number of taxable properties to meet the requirements of subsection (5).

(7) (a) *In each notice of reappraisal sent to a taxpayer, the department, with the support of the department of administration, shall provide to the taxpayer information on:*

(i) *the consumer price index adjusted for population and the average annual growth rate of Montana personal income; and*

(ii) *the estimated annualized change in property taxes levied over the previous 10 years by the state, county, and any incorporated cities or towns within the county and local school average mills by county.*

(b) *In every even-numbered year, the department shall publish in a newspaper of general circulation in each county the information required pursuant to subsection (7)(a) by the second Monday in October."*

**Section 2.** Section 15-16-101, MCA, is amended to read:

**"15-16-101. Treasurer to publish notice – manner of publication.**

(1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

(iii) itemized city services and special improvement district assessments collected by the county;

(iv) the number of the school district in which the property is located;

(v) the amount of the total tax due *itemized by mill levy* that is levied as city tax, county tax, state tax, school district tax, and other tax;

(vi) *an indication of which mill levies are voted levies, including voted levies to impose a new mill levy, to increase a mill levy that is required to be submitted to the electors, or to exceed the mill levy limit provided for in 15-10-420; and*

(vii) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the intangible land value assistance program provided for in 15-6-240, the property tax assistance programs under Title 15, chapter 6, part 3, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341.

(b)(b) If a tax lien is attached to the property, the notice must also include, in a manner calculated to draw attention, a statement that a tax lien is attached to the property, that failure to respond will result in loss of property, and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(a)(iii) ready for mailing.

(4) The notice in every case must be given as provided in 7-1-2121. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.”

**Section 3. Appropriation.** There is appropriated \$25,000 from the general fund to the department of revenue for the biennium beginning July 1, 2021, for publication costs related to [this act].

Approved May 10, 2021

## CHAPTER NO. 447

[SB 254]

AN ACT GENERALLY REVISING LAWS RELATED TO DAYLIGHT SAVING TIME; AUTHORIZING YEAR-ROUND MOUNTAIN DAYLIGHT SAVING TIME; EXEMPTING THE STATE AND ITS POLITICAL SUBDIVISIONS FROM MOUNTAIN STANDARD TIME; PROVIDING THAT YEAR-ROUND DAYLIGHT SAVING TIME IS CONTINGENT TO SIMILAR APPROVALS IN OTHER STATES; PROVIDING THAT YEAR-ROUND DAYLIGHT SAVING TIME IS ALSO CONTINGENT TO APPROVAL BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION OR CONGRESS; AMENDING SECTIONS 30-14-1729 AND 71-1-313, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

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

**Section 1. Mountain daylight time.** (1) The year-round observed time of the entire state and all of the state’s political subdivisions is mountain daylight time. The state exempts all areas of the state from mountain standard time.

(2) As used in this section:

(a) “Mountain daylight time” means the period during a year when mountain standard time is advanced 1 hour in accordance with 15 U.S.C. 260a.

(b) “Mountain standard time” means the observed time assigned to the mountain time zone in 15 U.S.C. 261.

**Section 2.** Section 30-14-1729, MCA, is amended to read:

**“30-14-1729. Temporary lifting of security freeze – consumer requirements – consumer reporting agency duties – notification.**

(1) A consumer who wishes to allow access to the consumer’s own credit report by a specific party or for a specific period of time while a security freeze is in place shall contact each consumer reporting agency, using a point of contact designated by the consumer reporting agency by regular or certified mail, telephone, or a secure electronic connection, request that the security freeze be temporarily lifted, and provide all of the following:

(a) proper identification;

(b) the unique personal identification number, password, or device provided by the consumer reporting agency pursuant to 30-14-1728(3);

(c) the proper information regarding the third party who is to receive the credit report or the time period for which the credit report is to be available to users of the credit report; and

(d) a fee, if applicable.

(2) (a) Except as provided in subsection (2)(b), a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report as provided in subsection (1) shall comply with the request no later than 3 business days after receiving the request.

(b) By no later than January 31, 2009, a consumer reporting agency shall honor a request for the temporary lifting of a security freeze made by telephone or through a secure electronic connection designated by the consumer reporting agency within 15 minutes of receiving the request unless one of the following circumstances applies:

(i) the consumer fails to meet the requirements of subsections (1)(a) through (1)(c); or

(ii) the consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented by:

(A) a natural disaster or act of God, including fire, earthquake, or hurricane;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, or a labor strike or similar labor dispute disrupting operations;

(C) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, or computer hardware or software failures inhibiting response time;

(D) governmental action, including emergency orders or regulations or judicial or law enforcement action;

(E) receipt of a removal request outside of normal business hours; or

(F) maintenance of, updates to, or repair of the consumer reporting agency's systems, whether regularly scheduled or unexpected or unscheduled.

(c) For the purposes of this section, "normal business hours" means from 6 a.m. to 9:30 p.m., ~~mountain standard time or~~ mountain daylight time, 7 days a week, excluding holidays.

(3) A consumer reporting agency shall:

(a) designate the contact address and telephone number along with a telefax number or appropriate electronic access address when providing the unique personal identification number, password, or other device as provided in 30-14-1728(3); and

(b) develop procedures to implement this section by January 31, 2009, involving the use of telephone, telefax, or electronic connection, using a process for legally required notices provided for in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001.

(4) Only the attorney general may enforce the provisions of this section related to a failure to comply with the 15-minute requirement for the temporary lifting of a security freeze."

**Section 3.** Section 71-1-313, MCA, is amended to read:

**"71-1-313. Conditions for foreclosure by advertisement and sale.** The trustee may foreclose a trust indenture by advertisement and sale under this part if:

(1) the trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are

recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture or some part thereof is situated;

(2) there is a default by the grantor or other person owing an obligation or by their successors in interest, the performance of which is secured by the trust indenture, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(3) the trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture or some part thereof is situated a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(b) a description of the property covered by the trust indenture;

(c) the book and page of the mortgage records where the trust indenture is recorded;

(d) the default for which the foreclosure is made;

(e) the sum owing on the obligation secured by the trust indenture;

(f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;

(g) the date of sale, which ~~shall~~ *must* not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which ~~shall~~ *must* be between the hours of 9 a.m. and 4 p.m., mountain ~~standard~~ *daylight* time; and

(h) the place of sale, which ~~shall~~ *must* be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated."

**Section 4. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [section 1].

**Section 6. Contingent effective date.** (1) [This act] is effective on the first Sunday of November following the day that the governor certifies to the code commissioner that:

(a) not fewer than four western states, including Montana, pass legislation to place all or a portion of those states on year-round daylight saving time, regardless of the time zone; and

(b) (i) legislation enacted by congress goes into effect to amend 15 U.S.C. 260a to authorize states to observe daylight saving time year-round; or

(ii) the United States department of transportation, pursuant to the department authority in 15 U.S.C. 260, et seq., approves the state's transfer from mountain standard time to central standard time.

(2) As used in this section, "western states" means the states of Idaho, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Approved May 10, 2021

## CHAPTER NO. 448

[SB 272]

AN ACT REVISING THE INFORMATION TECHNOLOGY BOARD; ALLOWING FOR THREE MEMBERS WHO ARE STATE AGENCY DIRECTORS; PROVIDING EXEMPTIONS; AMENDING SECTIONS 2-15-1021 AND 2-17-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-15-1021, MCA, is amended to read:

**“2-15-1021. Information technology board – membership – qualifications – vacancies – compensation.** (1) There is an information technology board. The board consists of ~~19~~ 18 members who are appointed as follows:

(a) the director of the department of administration, who serves as presiding officer of the board;

(b) the chief information officer provided for in 2-17-511;

(c) the director of the office of budget and program planning;

(d) ~~six~~ *three* members who are directors of state agencies and who are appointed by the governor;

(e) two members representing local government, appointed by the governor;

(f) one member representing the public service commission, appointed by the public service commission;

(g) one member representing the private sector, appointed by the governor;

(h) one member of the house of representatives, appointed by the speaker of the house of representatives;

(i) one member of the senate, appointed by the president of the senate;

~~(j) one member representing the legislative branch, appointed by the legislative branch information technology planning council;~~

*(j) one member representing the legislative branch, appointed by the legislative branch information technology planning council;*

~~(k)~~ *(k)* one member representing the judicial branch, appointed by the chief justice of the supreme court;

~~(l) one member representing the university system, appointed by the board of regents; and~~

~~(m) one member representing K-12 education, appointed by the superintendent of public instruction.~~

*(l) one member representing K-12 education, appointed by the superintendent of public instruction;*

*(m) the attorney general or their designee;*

*(n) the secretary of state or their designee; and*

*(o) the state auditor or their designee.*

(2) Appointments must be made without regard to political affiliation and must be made solely for the wise management of the information technology resources used by the state.

(3) A vacancy occurring on the board must be filled by the appointing authority in the same manner as the original appointment.

(4) The board shall function in an advisory capacity as defined in 2-15-102.

(5) Members of the board must be reimbursed and compensated in the same manner as members of quasi-judicial boards under 2-15-124(7), except that legislative members are reimbursed and compensated as provided in 5-2-302.”

**Section 2.** Section 2-17-516, MCA, is amended to read:

**“2-17-516. Exemptions – department of justice – secretary of state – university system – office of public instruction – national guard.**

(1) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the office of public instruction ~~is and the secretary of state are~~ exempt from 2-17-512(1)(k) and (1)(l).

(2) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the ~~department of justice, and the university system is~~ *are* exempt from:

- (a) the enforcement provisions of 2-17-512(1)(d) and (1)(e) and 2-17-514;
- (b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;
- (c) the budget approval provisions of 2-17-512(1)(g); and
- (d) the provisions of 2-17-512(1)(k) and (1)(l).

(3) The department, upon notification of proposed activities by the *department of justice, the secretary of state, the university system, or the office of public instruction*, shall determine if the central computer center or the statewide telecommunications network would be detrimentally affected by the proposed activity.

(4) (a) For purposes of this section, a proposed activity affects the operation of the central computer center or the statewide telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of the central computer center or the statewide telecommunications network *or fails to meet the minimum security policies and standards set by the department.*

(b) *Potential loss of revenue from fees paid by the department of justice, the secretary of state, the university system, or the office of public instruction for not utilizing services offered by the department are not considered a detrimental effect to the statewide telecommunications network or central computer center. If the department of justice, the secretary of state, the university system, or the office of public instruction does not utilize a service program after the department's rate was set for the biennium, the agency shall continue to pay any fees associated with the service or program for the remainder of the biennium.*

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) *When reviewing proposed activities of the department of justice, the department shall consider and make reasonable allowances for the unique safety and security needs and characteristics of the department of justice to communicate and share data with federal, state, and local law enforcement entities.*

(7)(8) Section 2-17-512(1)(u) may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(8)(9) The national guard, as defined in 10-1-101(3), is exempt from 2-17-512.”

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

Approved May 10, 2021

## CHAPTER NO. 449

[SB 297]

AN ACT PROVIDING FOR BROADBAND INFRASTRUCTURE DEPLOYMENT LAWS; ESTABLISHING THE MONTANA BROADBAND INFRASTRUCTURE ACCOUNTS; ESTABLISHING THE MONTANA BROADBAND DEPLOYMENT PROGRAM; PROVIDING A PROPOSAL PROCESS; PROVIDING DEFINITIONS; PROVIDING FOR AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

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

**Section 1. Short title.** [Sections 1 through 9] may be cited as the “ConnectMT Act”.

**Section 2. Definitions.** As used in [sections 1 through 9], unless the context clearly indicates otherwise, the following definitions apply:

(1) “Broadband service” means any commercially mature, universally available, terrestrially deployed technology having the capacity to transmit data from or to the internet at minimum speeds downstream and upstream at low latency to accommodate adequate and commonly used internet-based applications for residential, commercial, or government use.

(2) “Broadband service infrastructure” means the signal transmission facilities and associated network equipment proposed to be deployed in a project area used for the provision of broadband service to residential, business, and government customers.

(3) “Department” means the department of commerce.

(4) “Eligible provider” means an entity that:

(a) has authorization to do business in the state; and

(b) has demonstrated that it has the technical, financial, and managerial resources and experience to provide broadband service or other communications service to customers in the state.

(5) “FCC” means the federal communications commission.

(6) “Frontier area” means an area where there is no or extremely limited terrestrial broadband service.

(7) “Low latency” means latency that is sufficiently low to allow multiple, simultaneous, real-time interactive applications.

(8) “Project” means a proposed deployment of broadband service infrastructure set forth in a proposal for funding authorized under [sections 1 through 9].

(9) “Project area” means a shapefile area in an unserved or underserved area where the proposed broadband service infrastructure would be built as described in a proposal for funding authorized under [sections 1 through 9].

(10) “Shapefile” means a GIS file format for storing, depicting, and analyzing geospatial data depicting broadband coverage. It is made up of several component files, such as a main file (.shp), an index file (.shx), and a dBASE table (.dbf).

(11) “Underserved area” means an area where any of the delivery points have no access to broadband service offered with a download speed range of less than 100 megabits per second and an upload speed of 20 megabits per second or less with low latency.

(12) “Unserved area” means a project area where at least 10% of delivery points have no access to broadband service or have no access to services operating with a download speed of at least 25 megabits per second and upload speed of at least 10 megabits per second with low latency.

**Section 3. Establishment of program -- administration and funding.** (1) The department shall establish the broadband infrastructure deployment program and shall administer and act as the fiscal agent for the program and is responsible for receiving and reviewing responsive proposals and awarding contracts after review by the communications advisory commission provided for in House Bill No. 632 and the governor’s approval. A request for proposal may be canceled or any proposal may be rejected in whole or in part when it is in the best interests of the state.

(2) Funding for the program established under this section is subject to appropriations from general fund revenue, from bonds issued by the department, or federal broadband stimulus funds or other federal funds

appropriated by congress and allocated to the department for funding of broadband communications projects.

**Section 4. Eligible projects.** (1) An eligible provider may be awarded funding under this section for a project in a project area that, as of the date the proposal is filed, constitutes an unserved or underserved area as defined in [section 2]. Funds may not be used to support noncapital expenses, including general operations of an eligible provider, nonbroadband services, marketing, or advertising.

(2) The project area to be served by a project funded under the program must be described on a shapefile basis.

(3) The department may issue requests for proposals or accept proposals from eligible providers or solicit proposals for specific eligible projects as designated by the department, which would be submitted as proposals pursuant to [section 1 through 9].

**Section 5. Eligible proposals.** Eligible providers who submit responsive proposals:

(1) may not receive funds under any other federal or state government grant or loan program where government funding supports 100% of the proposed project's capital costs;

(2) shall commit to paying a minimum of 20% of the project costs and may not provide a minimum matching amount from any funds derived from government grants or subsidies, except for federal funds designated for broadband deployment. Priority will be given to the eligible provider who contributes the largest percentage of costs from its own funds. Local and tribal governments, in partnership with an eligible provider may provide funding for broadband infrastructure projects consistent with the provisions of [section 1 through 9] except that such funds may not be counted toward the minimum 20% matching amount from a provider.

(3) may only be a nongovernment entity with demonstrated experience in providing broadband service or other communications services to end-user residential or business customers in the state.

**Section 6. Proposals.** (1) The department shall establish a location prioritized timeframe commencing an open process for submission of proposals for funding under the proposal program established in [sections 1 through 9]. The window for submission must be at least 60 days and not more than 90 days for any shapefile area designation.

(2) An eligible provider shall submit a proposal to the department on a form prescribed by the department. A responsive proposal must include the following information:

(a) evidence demonstrating the provider's technical, financial, and managerial resources and experience to provide broadband service or other communications services to customers in the state, and the ability to build, operate, and manage broadband service networks serving business and residential customers in the state;

(b) a description of the project area, including shapefiles, that the eligible provider proposes to build or serve and specific mapping of currently served areas, if any, including actual speed verification;

(c) a description of the broadband service infrastructure that is proposed to be deployed, including facilities, equipment, and network capabilities that include minimum speed thresholds;

(d) evidence, including a certification from the proposal signatory, demonstrating the unserved or underserved nature of the project area to the best of the provider's knowledge;

(e) the number of households, businesses, and public institutions or entities that would have new access to broadband service as a result of the proposal;

(f) the total cost of the proposed project and the timeframe in which it will be completed;

(g) the amount of matching funds, including funds from local or tribal governments, and except for federal funds designated for broadband deployment, the eligible provider proposes to contribute and a certification that no portion of the provider's matching funds are derived from any federal or state grant program; and

(h) a preliminary list of all government authorizations, permits, and other approvals required in connection with the proposed deployment, and an estimated timetable for the acquisition of the approvals and the completion of the proposed project.

(3) The department shall treat any information that is not publicly available as confidential and subject to the trade secrets protections of state law upon an eligible provider's request for confidential treatment, except that shapefile information depicting broadband coverage must be publicly disclosed in sufficient detail to enable a challenging provider to identify the area covered by the provider.

**Section 7. Review of proposal challenges – approval.** (1) Five business days following the closing of the submission window, the department shall make the proposals received available for review in a publicly available electronic file, subject to the confidentiality provisions of [section 6(3)].

(2) A broadband service provider that has timely submitted a proposal may submit to the department, within 30 days of the release of the proposals received, a written challenge to the proposals. The challenge must also include a new proposal that identifies improvements or increases in broadband speed, lower cost, area coverage, or completion date relative to the submitted proposals. Final response to challenges will be provided within 15 days of receipt of challenge for the purpose of expediting awarded projects or modifications accepted through the challenge process. This challenge may include:

(a) information irrefutably disputing a provider's certification that a proposed project area is an unserved or an underserved area supported by the department's verified independent analysis and testing;

(b) that no federal funding has been awarded to support the specific deployment proposed in the response pursuant to [section 5(1)]; and

(c) evidence of broadband service infrastructure meeting or exceeding minimum standards for competitive proposals in the project area under challenge.

(3) Public shapefile data that includes the project area created under the FCC's rules for shapefiles must constitute evidence of broadband service infrastructure sufficient to show that a challenged project area is served completely beyond minimum standards.

(4) In reviewing proposals and any accompanying challenge, the department shall conduct its own review of the proposed project areas to ensure that all awarded funds are used to deploy broadband service infrastructure to unserved or underserved areas. The department may require a provider or challenging provider to submit additional information consistent with [sections 1 through 9] to enable it to properly assess the proposal or challenge. The department may not award a contract to fund deployment of broadband service infrastructure for a project area that fails to meet any of the criteria provided in [sections 1 through 9] for being an unserved or underserved area. The

department may require a provider to modify a proposal based on broadband access in the proposed area or other relevant factors.

(5) The department shall award funding support for projects set forth in responsive proposals based on a scoring system that must be released to the public at least 30 days prior to the window for submission of proposals. The weighting scheme employed by the department must give the highest weight or priority to the following specific criteria:

(a) the amount of funds a local government and/or school district is contributing to the project relative to the amount of federal funds received by that local government and/or school district from the American Rescue Plan Act of 2021;

(b) whether the proposed project area is a frontier, unserved, or underserved area, with frontier and unserved areas receiving greater weight;

(c) the size and scope of the frontier, unserved, or underserved area proposed to be served;

(d) the experience, technical ability, and financial soundness of the eligible provider in successfully deploying and providing broadband service;

(e) the length of time the provider has been providing broadband service in the state;

(f) the extent to which government funding support is necessary to deploy broadband service infrastructure in the proposed project area;

(g) the size and proportion of the matching funds proposed to be committed by the provider;

(h) the service speed thresholds proposed in the proposal and the scalability of the broadband service infrastructure proposed to be deployed with higher speed thresholds receiving greater weight;

(i) the provider's ability to leverage its own nearby or adjacent broadband service infrastructure to facilitate the cost-effective deployment of broadband service infrastructure in the proposed project area;

(j) the extent to which the project does not duplicate any existing broadband service infrastructure in the proposed project area;

(k) the estimated time in which the provider proposes to complete the proposed project;

(l) the number of Montana jobs the provider proposes to create or maintain relative to the population of the region where service is proposed; and

(m) any other factors the department determines to be reasonable and appropriate, consistent with the purpose of facilitating the economic deployment of broadband service infrastructure to unserved or underserved areas.

(6) Frontier areas will be considered for services to the extent terrestrial service is economically viable.

(7) The department shall set a reasonable timeframe to complete projects selected for funding approval. The department may, in consultation with the provider, set reasonable milestones regarding this completion. The department shall create procedures including penalties associated with any failure to comply with the provisions of the awarded contract without reasonable cause.

**Section 8. Implementation.** (1) Consistent with the provisions of [sections 1 through 9], the department shall define criteria and implementation processes to ensure that project funds are used as intended.

(2) This section may not be construed to preclude the department from considering a provider's financial ability to complete the project proposed in a proposal or making reasonable requests for information necessary for the oversight and administration of projects funded under this section.

(3) This section may not be construed to empower the department to adopt any additional regulatory obligations or to impose any new or additional regulatory requirements on funding recipients, through proposal agreements or any other mechanism, other than the program implementation procedures expressly authorized in [sections 1 through 9].

**Section 9. Montana broadband infrastructure accounts.** (1) (a) There is a federal special Montana broadband infrastructure account.

(b) All money in the account is allocated to the department of commerce to be used solely for the purposes of [sections 1 through 9]. Interest earned on funds in the account must be deposited in the account.

(c) The governor may accept and shall deposit into the account federal broadband stimulus funds or other federal funds or other federal funds appropriated by congress and allocated to the department of commerce for funding of broadband communications projects.

(d) Notwithstanding any other provision of law, funds allocated under this section may not be transferred or expended for any purpose other than to provide funding for projects authorized pursuant to [sections 1 through 9].

(2) (a) There is a state special Montana broadband infrastructure account.

(b) All money in the account is allocated to the department of commerce to be used solely for the purposes of [sections 1 through 9]. Interest earned on funds in the account must be deposited in the account.

(c) The governor may accept and shall deposit to the account any penalties allocated to the department of commerce for funding of broadband communications projects.

(d) Notwithstanding any other provision of law, funds allocated under this section may not be transferred or expended for any purpose other than to provide funding for projects authorized pursuant to [sections 1 through 9].

**Section 10. Appropriation.** For the biennium beginning July 1, 2021, there is appropriated \$500,000 from the state special revenue account provided for in [section 9(2)] to the department of commerce for enforcing the implementation of [this act].

**Section 11. Codification instruction.** [Sections 1 through 9] 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 9].

**Section 12. Effective date.** [This act] is effective on passage and approval.

**Section 13. Contingent termination.** [Sections 1 through 9] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] allocated to the department of commerce for communications have been expended.

Approved May 10, 2021

## CHAPTER NO. 450

[SB 300]

AN ACT GENERALLY REVISING TRAFFIC EDUCATION LAWS; REVISING THE TRAFFIC EDUCATION DUTIES OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO APPROVE PRIVATE TRAFFIC EDUCATION COURSES; AUTHORIZING A SCHOOL DISTRICT TO PROVIDE THE TRAFFIC EDUCATION CLASSROOM INSTRUCTION IN A DISTANCE LEARNING FORMAT; ALLOWING A PARENT OR GUARDIAN OF A

STUDENT WHO COMPLETES THE TRAFFIC EDUCATION CLASSROOM INSTRUCTION TO INSTRUCT THE STUDENT IN THE HANDS-ON DRIVING PORTION OF THE TRAFFIC EDUCATION COURSE; ALLOWING A TEMPORARY OPPORTUNITY FOR A STUDENT TO OBTAIN A LEARNER LICENSE AFTER TAKING AN ONLINE TRAFFIC EDUCATION COURSE DUE TO THE COVID-19 PANDEMIC; AMENDING SECTIONS 20-7-502, 20-7-503, 61-5-106, AND 61-5-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 20-7-502, MCA, is amended to read:

**“20-7-502. Duties of superintendent of public instruction.** The superintendent of public instruction shall:

(1) develop, administer, and supervise a program of instruction in traffic education;

(2) establish basic course requirements in instruction for traffic education;

(3) establish the qualifications for a teacher of traffic education;

(4) approve teachers of traffic education when the teachers are qualified;

(5) establish criteria for traffic education course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;

(6) approve traffic education courses when the courses meet the criteria for approval, *including a commercially available private traffic education course;*

(7) promulgate a policy for the distribution of the traffic education money to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law;

(8) assist districts with the conduct of traffic education; **and**

(9) periodically conduct onsite driver education program reviews;

(10) *establish any alternative course requirements necessary to allow a district to provide an online or distance learning classroom component for a traffic education course pursuant to 20-7-503(2)(a); and*

(11) *establish any alternative course requirements necessary to allow the student's parents or guardian to instruct the student in the hands-on driving component of a traffic education course pursuant to 20-7-503(2)(b).”*

**Section 2.** Section 20-7-503, MCA, is amended to read:

**“20-7-503. District establishment of traffic education program.**

(1) The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course. The traffic education course shall be:

(1)(a) for students who are 15 years old or older or will have reached their 15th birthday within 6 months of the course completion;

(1)(b) taught by a teacher of traffic education;

(1)(c) conducted in accordance with the basic course requirements established by the superintendent of public instruction; and

(1)(d) taught during regular school hours, after regular school hours, on Saturdays, or as a summer school course, at the option of the trustees.

(2) (a) *A school district may offer the classroom portion of a traffic education course through an online or distance learning platform.*

(b) *When a student completes the classroom portion of a traffic education course pursuant to subsection (2)(a), the student is authorized to take the hands-on driving portion of the traffic education course under the instruction of the student's parent or guardian.”*

**Section 3.** Section 61-5-106, MCA, is amended to read:

**“61-5-106. Instruction permits – temporary driver’s permits.**

(1) (a) The department may issue a learner license, which is valid for 1 year from the date of issuance, to a person satisfying the age requirements specified in 61-5-105(1) after the applicant has successfully passed the knowledge test and the vision examination, as provided in 61-5-110. Except as provided in subsections (1)(b) and (1)(c), a learner license entitles the licensee, while in immediate possession of the license and accompanied by a licensed driver seated beside the licensee, to drive a motor vehicle other than a motorcycle upon the public highways.

(b) If the licensee is under 18 years of age, the driver supervising the licensee must be a parent or a legal guardian of the licensee or, with the permission of the licensee’s parent or legal guardian, a licensed driver 18 years of age or older. Each occupant of a motor vehicle driven by a licensee who is under 18 years of age shall wear a properly adjusted and fastened seatbelt or, if 61-9-420 applies, must be properly restrained in a child safety restraint.

(c) A person holding a learner license for a motorcycle may drive a motorcycle upon a public highway if the person is not carrying a passenger, has immediate possession of the license, and is under the immediate and proximate visual supervision of one of the following persons, who must be at least 18 years of age if the licensee is under 18 years of age:

(i) a motorcycle-endorsed licensed driver who is riding with the licensee and who is operating a separate motorcycle or other motor vehicle; or

(ii) a licensed driver who is operating a separate motor vehicle if the licensee has successfully completed a motorcycle safety training course through a cooperative driver testing program certified under 61-5-110.

(2) (a) The department may issue a learner license, which is valid for 1 year from the date of issuance, to any person who is at least 14 1/2 years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction and that is available to all who meet the age requirements specified in 20-7-503 and reside within the geographical boundaries of or attend a school in the school district that offers the course. A learner license entitles the licensee to operate a motor vehicle when accompanied by an approved instructor, a licensed parent or guardian, or other driver as provided in subsection (1)(b) and may be restricted to specific times or areas.

(b) *A person who meets the age requirements established in subsection (2)(a) and was unable to participate in a traffic education course as a result of the covid-19 pandemic must be allowed to test for and receive a learner license upon showing proof of completion of an online traffic education course.*

(3) (a) An instructor of a traffic education program approved by the department and by the superintendent of public instruction may issue a traffic education permit that is effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department and who meets the age requirements specified in 20-7-503.

(b) When in immediate possession of the traffic education permit, the permittee may operate on a designated highway or within a designated area:

(i) a motor vehicle when an approved instructor is seated beside the permittee; or

(ii) a motorcycle or quadricycle when under the immediate and proximate supervision of an approved instructor.

(4) The department may in its discretion issue a temporary driver’s permit to an applicant for a driver’s license permitting the applicant to operate a motor vehicle while the department is completing its investigation and determination

of all facts relative to the applicant's right to receive a driver's license. The temporary driver's permit must be in the permittee's immediate possession while operating a motor vehicle, and it is invalid when the applicant's license has been issued or for good cause has been refused.

(5) The department may in its discretion issue a temporary commercial driver's license to an applicant permitting the applicant to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial driver's license. The temporary license must be in the applicant's immediate possession while operating a commercial motor vehicle and is invalid when the applicant's license has been issued or for good cause has been refused.

(6) The department may in its discretion issue a temporary medical assessment and rehabilitation driving permit, as provided in 61-5-120."

**Section 4.** Section 61-5-132, MCA, is amended to read:

**"61-5-132. Prerequisites for issuance of driver's license to minor.**

(1) The department may issue a driver's license, subject to the restrictions of 61-5-133, to a person under 18 years of age if the person:

(a) has held a learner license or traffic education permit for a period of not less than 6 months;

(b) has passed a road test or a skills test, as provided in 61-5-110;

(c) (i) *has successfully completed a traditional traffic education course approved pursuant to 20-7-503(1) and presents written certification from the person's parent or legal guardian that states that the person has had at least 50 hours of driving experience, 10 of which were at night, during which the person was supervised by a parent, a legal guardian, or a person at least 18 years of age, with the consent of the parent or legal guardian, who had a valid driver's license; or*

(ii) *has successfully completed an alternative traffic education course approved by the department of justice and presents written certification from the person's parent or legal guardian that states the person has had at least 75 hours of driving experience, 15 of which were at night, during which the person was supervised by a parent, legal guardian, or a person at least 18 years of age, with the consent of the parent or legal guardian, who had a valid driver's license; and*

(d) presents written certification from the person's parent or legal guardian that states that, during the 6-month period immediately preceding application for a driver's license, the person has not been convicted of a traffic violation or convicted of or adjudicated for an offense involving the use of alcohol or drugs and the person has no pending traffic, alcohol, or drug citations.

(2) If a parent or a legal guardian for a person under 18 years of age cannot certify that the person has a 6-month conviction-free record for traffic, alcohol, and drug violations and no pending traffic, alcohol, or drug citations, the department may extend the person's learner license for an additional 1-year period or until the person's 18th birthday, whichever occurs first.

(3) (a) The requirements of subsections (1)(a) through (1)(c) do not apply to a person under 18 years of age who has been licensed in another state for at least 6 months and surrenders a valid driver's license from that state.

(b) The requirements of subsection (1)(c) do not apply to a person under 18 years of age who, at the time of application for a driver's license, is an enrollee of a job corps program located in Montana. The department may require the applicant to provide current documentation of the applicant's job corps program enrollment status."

**Section 5. Effective date.** [This act] is effective on passage and approval.  
**Section 6. Termination.** [Section 3] terminates June 30, 2023.

Approved May 10, 2021

## CHAPTER NO. 451

[SB 320]

AN ACT PROVIDING FOR AN ALCOHOL DELIVERY ENDORSEMENT; PROVIDING DELIVERY REQUIREMENTS FOR BEER AND WINE; APPLYING THE DELIVERY REQUIREMENTS TO ON-PREMISES BEER AND WINE, ALL-BEVERAGES, AND RESTAURANT BEER AND WINE LICENSES; REQUIRING THE DELIVERY TO BE PART OF THE DELIVERY OF FOOD THAT IS PREPARED BY THE LICENSEE; REQUIRING THE DELIVERY TO BE MADE BY THE LICENSEE; AND AMENDING SECTIONS 16-4-105, 16-4-201, AND 16-4-420, MCA.

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

**Section 1.** Section 16-4-105, MCA, is amended to read:

**“16-4-105. Limit on retail beer licenses – wine license amendments – limitation on use of license – exceptions – competitive bidding – rulemaking.** (1) Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person or business entity that is approved by the department, subject to the following exceptions:

(a) The number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each additional 2,000 inhabitants.

(b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail beer licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of an incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(i) the county boundary within which the incorporated city or incorporated town is located; or

(ii) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(d) Retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations.

(e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(f) The number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (7) does not apply to licenses issued under this subsection (1)(f). The owner of the license whose premises are situated outside of an incorporated city or incorporated town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(b) If any new retail beer licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (1)(c), the department shall publish the availability of no more than one new beer license a year until the quota has been reached.

(c) If any new retail beer licenses are allowed by license transfers as provided in subsection (2)(a), the department may publish the availability of more than one new license a year until the quota has been reached.

(3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of the annexation.

(4) When the department determines that a quota area is eligible for a new retail beer license under subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

(5) Except as provided in subsection (2)(b), when more than one new beer license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(6) (a) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(b) *A person licensed under this subsection (6) may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.*

(7) Except as provided in subsection (1)(f), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(8) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a \$25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

(9) The department may adopt rules to implement this section."

**Section 2.** Section 16-4-201, MCA, is amended to read:

**"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 3,000 inhabitants and within 5 miles of the corporate limits of the cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of more than 3,000 inhabitants and within 5 miles of the corporate limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(a) the county boundary within which the incorporated city or incorporated town is located; or

(b) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(3) (a) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(b) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(i) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(ii) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(iii) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(4) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (3) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(5) (a) If any new retail all-beverages licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in

subsection (3), the department shall publish the availability of no more than one new retail all-beverages license a year until the quota has been reached. The department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

(b) If any new all-beverages licenses are allowed by license transfers as provided in subsection (4), the department may publish the availability of more than one new license a year until the quota has been reached.

(6) Except as provided in subsection (5)(a), when more than one new all-beverages license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(7) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may not be issued in violation of the limitations.

(8) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and nonassignable, as to ownership only, retail license to:

(a) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985;

(b) any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949; or

(c) a continuing care retirement community as provided in 16-4-315.

(9) The number of retail all-beverages licenses that the department may issue for use at premises situated more than 5 miles outside of any incorporated city or incorporated town may not be more than one license for each 750 in population of the county after excluding the population of incorporated cities and incorporated towns in the county.

(10) An all-beverages license issued under subsection (9) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of annexation.

*(11) A person licensed under this section may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.*

~~(11)~~(12) The department may adopt rules to implement this section."

**Section 3.** Section 16-4-420, MCA, is amended to read:

**"16-4-420. Restaurant beer and wine license – competitive bidding – rulemaking.** (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) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;

(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;

(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

(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) and (3)(b). 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; and

(b) (i) the applicant's premises are suitable for the carrying on of the business;

(ii) the applicant is qualified to receive a license prior to a determination that the applicant's premises are suitable for carrying on with the business in accordance with 16-4-417; or

(iii) if the applicant has already been issued a license, the proposed premises are suitable for the carrying on of the business and 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 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). If a license is issued without a premises, the license will immediately be placed on nonuse status until the premises are approved subject to 16-4-417.

(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) 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) 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) 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 subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, 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) A restaurant beer and wine license not issued through a competitive bidding process as provided in 16-4-430 may be transferred, on approval by the department, from the original applicant to a new owner of the restaurant only after 1 year of use by the original owner, unless that transfer is due to the death of an 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 defined in 7-6-1501, 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) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(A) the county boundary within which the incorporated city or incorporated town is located; or

(B) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(9) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(b) If any new restaurant beer and wine licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in

16-4-105 and subsection (9)(a) of this section, the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached.

(c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in subsection (9)(a), the department may publish the availability of more than one new license a year until the quota has been reached.

(10) Except as provided in subsection (9)(b), when more than one new restaurant beer and wine license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(11) 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 a 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.

(12) When the department determines that a quota area is eligible for a new restaurant beer and wine license under subsection (9) or (11), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for a new license.

(13) ~~(a) Under~~ *Except as provided in subsection (13)(b), a restaurant beer and wine license;* beer and wine may not be sold for off-premises consumption.

*(b) A restaurant beer and wine licensee may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.*

(14) 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 decide either to grant or to deny 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 fewer;

(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.

(15) The annual fee for a restaurant beer and wine license is \$400.

(16) 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.

(17) 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.

(18) 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.

(19) The department may adopt rules to implement this section.”

Approved May 10, 2021

## CHAPTER NO. 452

[SB 336]

AN ACT GENERALLY REVISING LAWS RELATED TO DRIVER'S LICENSE RENEWALS; EXTENDING THE LICENSE RENEWAL PERIOD TO 1 YEAR PAST THE EXPIRATION DATE; EXTENDING THE LENGTH OF TIME A DRIVER'S LICENSE IS VALID FROM 8 TO 12 YEARS; AUTHORIZING RENEWAL APPLICANTS ON ACTIVE MILITARY DUTY TO RENEW A LICENSE BY MAIL OR ONLINE AS LONG AS THE APPLICANT IS ON ACTIVE DUTY; AMENDING SECTION 61-5-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 61-5-111, MCA, is amended to read:

**“61-5-111. Contents of driver's license, renewal, license expirations, license replacements, grace period, and fees for licenses, permits, and endorsements -- notice of expiration.** (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, and Montana residence address unless the licensee requests use of the mailing address, except that the Montana residence address must be used for a REAL ID-compliant driver's license unless authorized by department rule;

(iv) a brief description of the licensee;

(v) either the licensee's customary manual signature or a reproduction of the licensee's customary manual signature; and

(vi) if the applicant qualifies under subsection (7), indication of the applicant's status as a veteran.

(b) The department may not use the licensee's social security number as the distinguishing number. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and road or skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or ~~3 months~~ 1 year after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) Except as provided in subsections (3)(d)(iii) through ~~(3)(d)(vi)~~ (3)(d)(v), a person may renew a driver's license by mail or online.

(ii) An applicant who renews a driver's license by mail or online shall submit to the department an approved vision examination and a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, in addition to a completed application and the fees required for renewal.

(iii) If the department does not have a digitized photograph and signature record of the renewal applicant from the expiring license, then the renewal applicant shall apply in person.

(iv) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail or online is 8 12 years for a driver's license or 8 years for a REAL ID-compliant driver's license.

(v) The department may not renew a license by mail or online if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant;

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572;

(C) the applicant seeks a change of address, a change of date of birth, or a name change; or

(D) the applicant's license:

(I) has been expired for ~~3 months or longer~~ more than 1 year; or

(II) except as provided in subsection ~~(3)(e)~~ (3)(f), was renewed by mail or online at the time of the applicant's previous renewal.

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail or online.

(e) *A renewal applicant who is stationed outside Montana on active military duty may renew the license by mail or online as long as the applicant is on active military duty.*

(e)(f) The spouse or a dependent of a renewal applicant who is stationed outside Montana on active military duty may renew the applicant's license by mail or online for one additional consecutive term following a renewal by mail or online.

(f)(g) The department shall send electronically or mail a driver's license renewal notice no earlier than 120 days and no later than 30 days prior to the expiration date of a driver's license. The department shall send the notice to the licensee's Montana mailing address shown on the driver's license or, if requested by the licensee, provide the notice using an authorized method of electronic delivery, or both.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a license expires on the anniversary of the licensee's birthday 8 12 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 4 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license -- \$5 a year or fraction of a year;

(ii) motorcycle endorsement -- 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate -- \$10 a year or fraction of a year; or

(B) intrastate -- \$8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents.

(7) (a) Upon receiving a request from a person whose status as a veteran has been verified by the department of military affairs pursuant to 10-2-1301 and upon receiving the information and fees required in this part, the department shall include the word "veteran" on the face of the license.

(b) After a person's status as a veteran is denoted on a driver's license, the department may not require further documentation of that status from the holder of the license upon subsequent renewal or replacement.

(8) (a) Except as provided in subsection (8)(b), an applicant may request a replacement driver's license online or by mail.

(b) If the department does not have a digitized photograph and signature record of the applicant, the applicant shall apply in person.

(c) The term of the replacement license must be the term of the applicant's current driver's license.

(9) (a) An applicant may request an expedited delivery service for a driver's license or identification card. The department shall set a fee for expedited delivery based on the cost of providing this service.

(b) The fees for expedited delivery must be deposited in the motor vehicle division administration account established in 61-3-112 and used for the purposes of expediting delivery, including actual costs for delivery, personnel, and related technology."

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

Approved May 10, 2021

## CHAPTER NO. 453

[SB 354]

AN ACT REVISING LAWS RELATED TO LAND SERVITUDES AND EASEMENTS; ALLOWING THE OWNER OF A SERVIENT TENEMENT TO MARK THE SERVITUDE BOUNDARIES WITH SIGNAGE; PROVIDING THAT THE EXTENT OF A SERVITUDE MAY NOT EXTEND BEYOND THOSE PURPOSES PROVIDED FOR IN WRITING; AMENDING SECTION 70-17-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Easement signage.** The owner of a servient tenement may place private property signage along the servitude boundary to ensure those persons or entities using the servitude understand the servitude boundary.

**Section 2.** Section 70-17-106, MCA, is amended to read:

**"70-17-106. Extent of servitude.** (1) *Except as otherwise provided in 23-2-312, 23-2-322, and this section, the extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by which it was acquired.*

(2) *A servitude granted, either by the terms of the grant or by the nature of the enjoyment, to a local, state, or federal government body for administrative purposes does not create a right to use the servitude for any other purpose unless specifically provided for in writing in the grant.*

(3) *The holder of a written servitude may not use the servitude to grant additional rights and privileges to a successor or assignee unless the successor or assignee is specifically provided for in writing in the grant."*

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 17, part 1, and the provisions of Title 70, chapter 17, part 1, apply to [section 1].

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

Approved May 10, 2021

## CHAPTER NO. 454

[SB 374]

AN ACT REVISING LAWS RELATING TO DISPENSING OF DRUGS BY MEDICAL PRACTITIONERS; ALLOWING MEDICAL PRACTITIONERS TO DISPENSE DRUGS TO PATIENTS; ESTABLISHING REQUIREMENTS FOR AND LIMITATIONS ON MEDICAL PRACTITIONER DISPENSING; REQUIRING REGISTRATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-2-104, 37-7-103, AND 50-31-307, 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 – registration – 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~~ *Subject to subsection (7), a medical practitioner may dispense drugs if the practitioner:*

(a) *registers with the board of pharmacy provided for in 2-15-1733; and*

(b) *complies with the requirements of this section.*

(2) *Drugs dispensed by a medical practitioner must be:*

(a) *dispensed directly by the practitioner at the practitioner’s office or place of practice;*

(b) *dispensed only to the practitioner’s own patients; and*

(c) *necessary in the treatment of the condition for which the practitioner is attending the patient.*

(3) *Before dispensing a drug, a medical practitioner shall offer to give a patient the prescription in a written, electronic, or facsimile form that the patient may choose to have filled by the practitioner or any pharmacy.*

(4) *Except as otherwise provided in this section, a medical practitioner:*

(a) *may dispense only those drugs that the practitioner is allowed to prescribe under the practitioner’s scope of practice; and*

(b) *may not dispense a controlled substance.*

(5) *A medical practitioner dispensing drugs shall comply with and is subject to the provisions of this part and the provisions of:*

(a) *Title 37, chapter 7, parts 4, 5, and 15;*

(b) *Title 50, chapter 31, parts 3 and 5;*

(c) *the labeling, storage, inspection, and recordkeeping requirements established by the board of pharmacy; and*

(d) *all applicable federal laws and regulations.*

(6) *A medical practitioner registering with the board of pharmacy shall pay a fee established by the board by rule. The fee must be paid at the time of registration and on each renewal of the practitioner’s license.*

(7) *Except as provided in subsection (8), a medical practitioner registered with the board of pharmacy may not dispense drugs to an injured worker being treated pursuant to Title 39, chapter 71.*

(2)(8) *This section does not prohibit any of the following when a medical practitioner has not registered to dispense drugs or when a practitioner registered to dispense drugs is treating an injured worker pursuant to Title 39, chapter 71:*

(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)~~ (8)(h) must meet the labeling, *storage, and recordkeeping* requirements of the board of pharmacy.

(i) a medical practitioner from dispensing an opioid antagonist as provided in 50-32-605."

**Section 2. Report to legislature and governor.** The board of pharmacy shall submit a report to the legislature, in accordance with 5-11-210, and to the governor no later than September 30, 2023, detailing:

(1) the number of medical practitioners who registered with the board to dispense prescription drugs;

(2) any enforcement actions taken by the board or another licensing entity related to complaints about the dispensing practices of medical practitioners; and

(3) any actions taken by the board or another licensing entity in response to complaints about or investigations into the dispensing practices of medical practitioners.

**Section 3.** Section 37-7-103, MCA, is amended to read:

**"37-7-103. Exemptions.** Subject only to 37-2-104, 37-7-401, and 37-7-402, this chapter does not:

(1) subject *a medical practitioner, as defined in 37-2-101*, or a person who is licensed in this state to practice ~~medicine, dentistry, or veterinary~~ medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a ~~person who is licensed to practice medicine~~ *medical practitioner* from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons at either wholesale or retail for use for commercial purposes or in the arts;

(4) change any of the provisions of this code relating to the sale of insecticides and fungicides;

(5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(7) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged contraceptives, other than mifepristone, if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board's requirements for labeling, storage, and recordkeeping of drugs; or

(8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to Title 37, chapter 18, part 6."

**Section 4.** Section 50-31-307, MCA, is amended to read:

**"50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by humans that is included in one of the categories in subsection (2) may be dispensed only if a practitioner licensed by law to administer or prescribe the drug:

(a) provides a written prescription;

(b) transmits the prescription directly to the pharmacy by electronic means *or directly dispenses the drug pursuant to 37-2-104*;

(c) provides an oral prescription that is reduced promptly to writing and filed by the pharmacist *or practitioner, if the practitioner dispenses the drug*; or

(d) authorizes the refilling of a written, electronic, or oral prescription either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist *or practitioner, if the practitioner fills the prescription*.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug; or

(c) is limited by an approved application under section 505 of the federal act (21 U.S.C. 355) or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug.

(3) If the drug is a factory prepackaged contraceptive, other than mifepristone, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of public health and human services pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

Approved May 10, 2021

**CHAPTER NO. 455**

[SB 398]

AN ACT REVISING LAWS RELATING TO ALTERNATIVE NICOTINE PRODUCTS, VAPOR PRODUCTS, AND TOBACCO; LIMITING LOCAL GOVERNING UNITS FROM PROHIBITING THE SALE OF ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS; INCREASING THE FEE TO SELL ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS AND CERTAIN TOBACCO PRODUCTS; AMENDING SECTIONS 7-1-111, 16-11-122, AND 16-11-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Alternative nicotine products and vapor products -- local ordinance or resolution -- prohibition.** (1) A local government may not adopt or enforce any local ordinance or resolution that prohibits the sale of alternative nicotine products or vapor products.

(2) Subject to 16-11-311, nothing in this section may be construed to restrict a local government from enacting reasonable ordinances or resolutions relating to the sale of alternative nicotine products or vapor products.

**Section 2.** Section 7-1-111, MCA, is amended to read:

**"7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12; or

(22) *any power to prohibit the sale of alternative nicotine products or vapor products as provided in [section 1(1)].*"

**Section 3.** Section 16-11-122, MCA, is amended to read:

**“16-11-122. License fees – renewal.** (1) Each application for a wholesaler’s license or a tobacco product vendor’s license must be accompanied by a fee of \$50.

(2) Each application for a subjobber’s license must be accompanied by a fee of \$50.

(3) Each application for a retailer’s license must be accompanied by a fee of \$5 \$50.

(4) Each application for a license to sell either alternative nicotine products or vapor products must be accompanied by a fee of \$5 \$20.

(5) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

(6) These licenses must be renewed annually on or before the anniversary date established by rule by the board of review established in 30-16-302 and upon payment of the annual fee are effective for 1 year, without proration, and are not transferable.”

**Section 4.** Section 16-11-311, MCA, is amended to read:

**“16-11-311. Local regulations.** A local government may by ordinance adopt regulations on the subjects of 16-11-301 through 16-11-308, *including alternative nicotine or vapor products as provided in [section 1],* that are no more stringent than 16-11-301 through 16-11-308 *and [section 1].*”

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 11, part 3, and the provisions of Title 16, chapter 11, part 3, apply to [section 1].

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

Approved May 10, 2021

## CHAPTER NO. 456

[SB 402]

AN ACT GENERALLY REVISING LAWS RELATING TO THE JUDICIARY; PROVIDING THAT JUDGES MAY NOT PRESIDE IN CERTAIN SITUATIONS; PROVIDING THAT THE JUDICIAL NOMINATING COMMISSION INCLUDE EIGHT ADDITIONAL LAY MEMBERS; INCREASING THE FEE FOR ENTRY OF JUDGMENT; AMENDING SECTIONS 3-1-1001 AND 25-1-201, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1. Restrictions on judicial officers presiding over matters in which they have previously asserted position.** (1) This section applies to all judicial officers, as defined in 1-1-202.

(2) Judicial officers may not participate in any action or proceeding involving the constitutionality of a provision of a bill if:

(a) the judicial officer has appeared before the Montana legislature or otherwise contacted a legislator or another governmental entity in support or opposition of a bill involving the same legislation if it is at issue in a case in which the judicial officer presides;

(b) the judicial officer has served on a committee or group designed to evaluate legislation when the committee or group expressed support or opposition on a bill during the judicial officer’s service on the committee or other group and a case involving the same legislation is pending before the judicial officer; or

(c) the judicial officer has publicly supported or opposed an issue or bill at the request of the Montana judges association or another entity and a case involving the legislation is pending before the judicial officer.

**Section 2.** Section 3-1-1001, MCA, is amended to read:

**“3-1-1001. Creation, composition, and function of commission.**

(1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge or associate water judge pursuant to 3-7-221. The commission is composed of ~~seven~~ 15 members as follows:

(a) ~~four~~ 12 lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively engaged or retired, who are appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 18 through 21 and one from that part of the state that is composed of judicial districts 6 through 8, 10, 12 through 17, and 22, who are appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to election by the chief justice of the supreme court. The election is considered an appointment for the purposes of this part.

(2) Appointments provided for in this section must be made within 30 days of the completion of the preceding terms.”

**Section 3.** Section 25-1-201, MCA, is amended to read:

**“25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, ~~\$45~~ \$50;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk’s office in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(iii) for providing copies of papers on file in the clerk’s office by facsimile, e-mail, or other electronic means in all criminal and civil proceedings, 25 cents per page;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

- (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
  - (j) for transmission of records or files or transfer of a case to another court, \$5;
  - (k) for filing and entering papers received by transfer from other courts, \$10;
  - (l) for issuing a marriage license, \$53;
  - (m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
  - (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;
  - (o) for filing a declaration of marriage without solemnization, \$53;
  - (p) for filing a motion for substitution of a judge, \$100;
  - (q) for filing a petition for adoption, \$75;
  - (r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.
- (2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must be deposited in the state general fund as specified by the supreme court administrator.
- (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.
- (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.
- (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).
- (5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.
- (6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.
- (7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$13 must be deposited in the domestic violence intervention account established by 44-7-202 and \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.
- (8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 6, and the provisions of Title 3, chapter 1, part 6, apply to [section 1].

**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 – contingency.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective on the date that the clerk of the Montana supreme court certifies to the code commissioner that Senate Bill No. 140 is found unconstitutional or otherwise invalid. The clerk of the Montana supreme court shall submit certification within 5 days of the occurrence of the contingency.

Approved May 10, 2021

## CHAPTER NO. 457

[SB 403]

AN ACT ALLOWING A COUNTY TO PROVIDE A DISTRIBUTION LIST TO A COUNTY WATER AND/OR SEWER DISTRICT TO NOTIFY PROPERTY OWNERS OF A PUBLIC HEARING; ALLOWING A COUNTY TO CHARGE A FEE FOR THE DISTRIBUTION LIST; AND AMENDING SECTIONS 2-6-1017 AND 7-13-2275, MCA.

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

**Section 1.** Section 2-6-1017, MCA, is amended to read:

**“2-6-1017. Prohibition on dissemination or use of distribution lists – exceptions – penalties.** (1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list except by the public agency or another public agency without first securing the permission of those on the list.

(2) As used in this section, “distribution list” means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution 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;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver’s licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73, and Title 50, chapters 39, 72, 74, and 76;

(e) *persons who own property in a county water and/or sewer district provided for in 7-13-2275(4)(d); or*

(~~e~~)*(f)* persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing education 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 the secretary of state's electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.

(8) This section does not apply to the use by the public employees' retirement board of a 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 list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) 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.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

**Section 2.** Section 7-13-2275, MCA, is amended to read:

**"7-13-2275. Procedure relating to ordinances and resolutions – rates, fees, and charges established.** (1) The ayes and noes must be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. An ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board must be in these words: "Be it ordained by the board of directors of \_\_\_\_\_ district as follows:"

(3) All resolutions and ordinances must be signed by the president of the board and attested by the secretary.

(4) (a) Except as provided in subsections (5) and (6), prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(b) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

- (i) the date, time, and place of the hearing;
- (ii) a brief statement of the proposed action; and
- (iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(c) The notice must also be mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.

(d) *The county or counties with territory included in the district shall provide to the district a list that includes the addresses of all persons who own property in the district pursuant to the notice requirements provided in subsection (4)(c). The county or counties may assess the district a fee not to exceed a total of \$50 for the development and distribution of the list provided for in this subsection (4)(d).*

(d)(e) Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

(e)(f) The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or charges.

(5) A public hearing is not required for a cumulative rate increase of less than or equal to 5% within a 12-month period if the board provides notification of the increase to persons within the district on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

(6) (a) If the establishment of or change in rates, fees, or charges proposed by a regional authority requires the authority to hold a public hearing pursuant to 75-6-326 and requires an increase to the rates, fees, or charges imposed by the district greater than the increase provided in subsection (5) of this section, the board shall:

(i) mail notice of the public hearing to be held by the authority to all customers of the district system at least 15 days prior to the public hearing; and

(ii) provide notification of the change to customers of the district system on whom the increased rates, fees, or charges will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

(b) The district is not required to hold a public hearing on the increase.”

**Section 3. Coordination instruction.** If House Bill No. 255 and [this act] are both passed and approved and if both contain a section that amends 7-13-2275, then the sections amending 7-13-2275 are void and 7-13-2275 must be amended as follows:

**“7-13-2275. Procedure relating to ordinances and resolutions – rates, fees, and charges established.** (1) ~~The ayes and noes must be taken upon the passage~~ *voting record* of all ordinances or resolutions and ~~entered upon~~ *must be entered in* the journal of the proceedings of the board of directors. An ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board must be in these words: “Be it ordained by the board of directors of \_\_\_\_\_ district as follows:”

(3) All resolutions and ordinances must be signed by the president of the board and attested by the secretary.

(4) (a) Except as provided in subsections (5) and (6), prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(b) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

(i) the date, time, and place of the hearing;

(ii) a brief statement of the proposed action; and

(iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(c) The notice must *contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution and must also be:*

(i) *posted to a website operated by the district or, if the district does not operate a website, posted to a website operated by the county or city with territory within the district; or*

(ii) mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the

public hearing. ~~The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.~~

*(d) If the district sends the notice by mail as provided in subsection (4)(c)(ii), the county or counties with territory included in the district shall provide to the district a list that includes the addresses of all persons who own property in the district pursuant to the notice requirements provided in subsection (4)(c)(ii). The county or counties may assess the district a fee not to exceed a total of \$50 for the development and distribution of the list provided for in this subsection (4)(d).*

~~(d)(e)~~ Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

~~(e)(f)~~ The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or charges.

(5) A public hearing is not required for a cumulative rate increase of less than or equal to 5% within a 12-month period if the board provides notification of the increase to persons within the district on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

(6) (a) If the establishment of or change in rates, fees, or charges proposed by a regional authority requires the authority to hold a public hearing pursuant to 75-6-326 and requires an increase to the rates, fees, or charges imposed by the district greater than the increase provided in subsection (5) of this section, the board shall:

(i) mail notice of the public hearing to be held by the authority to all customers of the district system at least 15 days prior to the public hearing; and

(ii) provide notification of the change to customers of the district system on whom the increased rates, fees, or charges will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

(b) The district is not required to hold a public hearing on the increase.”

Approved May 10, 2021

## CHAPTER NO. 458

[SB 184]

AN ACT ESTABLISHING THE MONTANA ENTREPRENEUR MAGNET ACT; PROVIDING TAXPAYERS WITH CERTAIN NET LONG-TERM CAPITAL GAINS THAT ARE ATTRIBUTABLE TO THE SALE OR EXCHANGE OF CAPITAL STOCK OF A CORPORATION ACQUIRED ON ACCOUNT OF EMPLOYMENT BY THE CORPORATION OR WHILE EMPLOYED BY THE CORPORATION TO BE TAXED AT A SINGLE TAX RATE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2103 AND 15-30-2153, 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. Short title.** [Sections 1 through 4] may be cited as the “Montana Entrepreneur Magnet Act”.

**Section 2. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) (a) “Capital stock” means voting or nonvoting common or preferred stock acquired as the result of employment or service as an employee or director with a corporation.

(b) The term does not include stock rights or debt securities.

(2) (a) “Corporation” means a corporation, as defined in 15-30-2101, including a unitary business, as described in 15-31-301.

(b) The term includes a predecessor or successor corporation.

(c) The term does not include either a business entity or a business entity with a financial interest in another business entity that is directly or indirectly engaged in a business activity that is illegal under federal law, regardless of how the business entity is organized.

(3) “Net long-term capital gain” has the meaning provided in section 1222(7) of the Internal Revenue Code, 26 U.S.C. 1222(7).

(4) “Predecessor or successor corporation” means a corporation that was party to a reorganization that was entirely or substantially tax-free and that occurred during or after the employment of an individual claiming the rate under [section 4].

**Section 3. Taxation of qualifying net capital gains from sale of capital stock – conditions – rulemaking.** (1) For a taxpayer to qualify for the tax rate under [section 4], as of the date on which the sale or exchange of capital stock is made by the taxpayer, the corporation must have:

(a) at least 60 consecutive months of new business activity in the state, with the first activity occurring on or after January 1, 2021;

(b) more than 50% of its corporate officers residing in the state for the previous 36 months;

(c) at least 30% of its employees residing in the state for the previous 12 months; and

(d) at least 25 full-time employees residing in the state for the previous 36 months.

(2) In order for a taxpayer to qualify for the tax rate under [section 4], the corporation whose capital stock was sold or exchanged may not be organized primarily for the purpose of land or real estate investment and in no case may more than 50% of the capital gain from the sale be attributable to gains on real property.

(3) The department shall adopt rules to implement and administer [sections 1 through 4].

**Section 4. Tax on qualifying net capital gains.** Subject to the conditions of [section 3], an alternative tax rate of 0% is imposed on the net long-term capital gain that is attributable to the sale or exchange of capital stock of a corporation.

**Section 5.** Section 15-30-2103, MCA, is amended to read:

“**15-30-2103. Rate of tax.** (1) ~~There~~ *Except as provided in [section 4], there* must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

(a) on the first \$2,900 of taxable income or any part of that income, 1%;

(b) on the next \$2,200 of taxable income or any part of that income, 2%;

(c) on the next \$2,700 of taxable income or any part of that income, 3%;

(d) on the next \$2,700 of taxable income or any part of that income, 4%;

(e) on the next \$3,000 of taxable income or any part of that income, 5%;

(f) on the next \$3,900 of taxable income or any part of that income, 6%;

(g) on any taxable income in excess of \$17,400 or any part of that income, 6.9%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1) of this section.”

**Section 6.** Section 15-30-2153, MCA, is amended to read:

**“15-30-2153. Determination of tax of estates and trusts.** The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-2103 or, if applicable, the rate contained in [section 4]. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.”

**Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 through 4].

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

**Section 9. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020.

Approved May 11, 2021

## CHAPTER NO. 459

[SB 376]

AN ACT GENERALLY REVISING APPORTIONMENT OF INCOME FOR PURPOSES OF MONTANA'S CORPORATE INCOME TAX; ADOPTING A DOUBLE-WEIGHTED SALES FACTOR APPORTIONMENT MODEL; AMENDING SECTION 15-1-601, 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 15-1-601, MCA, is amended to read:

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

### Article I. Purposes

The purposes of this compact are to:

(1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;

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

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

(4) avoid duplicative taxation.

### Article II. Definitions

As used in this compact:

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

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

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

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

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

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

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

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

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

(b) is complementary to a sales tax;

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

### Article III. Elements Of Income Tax Laws

#### Taxpayer Option, State and Local Taxes

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

### Taxpayer Option, Short Form

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

#### Coverage

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

### Article IV. Division Of Income

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

(a) "apportionable income" means:

(i) all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) income arising from transactions and activity in the regular course of the taxpayer's trade or business, and

(B) income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

(ii) any income that would be allocable to this state under the Constitution of the United States but that is apportioned rather than allocated pursuant to the laws of this state;

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

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

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

(e) "nonapportionable income" means all income other than apportionable income;

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

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

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

(g) "receipts" means all gross receipts of the taxpayer that are not allocated under paragraphs of this article and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities shall be excluded;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) All apportionable income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus *two times* the receipts factor and the denominator of which is  $\frac{3}{4}$ .

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

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

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

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

(14) Compensation is paid in this state if:

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

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

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

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

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

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

(16) Receipts from the sale of tangible personal property are in this state if:

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

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

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

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

(17) (a) Receipts, other than receipts described in subsection (16), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

- (i) in the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

- (ii) in the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

- (iii) in the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

- (iv) in the case of intangible property:

- (A) that is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

- (B) that is sold, if and to the extent the property is used in this state, provided that:

- (I) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

- (II) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subsection (17)(a)(iv)(A); and

- (III) all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

- (b) If the state or states of assignment under subsection (17)(a) cannot be determined, the state or states of assignment shall be reasonably approximated.

- (c) If the taxpayer is not taxable in a state to which a receipt is assigned under subsection (17)(a) or (17)(b), or if the state of assignment cannot be determined under subsection (17)(a) or reasonably approximated under subsection (17)(b), such receipt shall be excluded from the denominator of the receipts factor.

- (d) The tax administrator may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

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

- (i) separate accounting;

- (ii) the exclusion of any one or more of the factors;

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

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

(b) (i) If the allocation and apportionment provisions of this article do not fairly represent the extent of business activity in this state of taxpayers engaged in a particular industry or in a particular transaction or activity, the tax administrator may, in addition to the authority provided in section (18)(a), establish appropriate rules or regulations for determining alternative allocation and apportionment methods for such taxpayers.

(ii) A regulation adopted pursuant to this section shall be applied uniformly, except that with respect to any taxpayer to whom such regulation applies, the taxpayer may petition for, or the tax administrator may require, adjustment pursuant to subsection (18)(a).

(c) (i) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (18)(a) must prove by a preponderance of the evidence:

(A) that the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state; and

(B) that the alternative to such provisions is reasonable.

(ii) The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. Notwithstanding the previous sentence, if the tax administrator can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the tax administrator shall not bear the burden of proof in imposing a different method pursuant to (18)(a).

(d) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this article.

(e) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied.

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

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

#### Exemption Certificates -- Vendors May Rely

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

Article VI. The Commission  
Organization and Management

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

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

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

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

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

(f) The commission shall elect annually, from among its members, a presiding officer, a vice presiding officer, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

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

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

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

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

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

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be

reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

#### Committees

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

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

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

#### Powers

(3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) study state and local tax systems and particular types of state and local taxes;

(b) develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;

(c) compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### Finance

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

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

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

the commission makes use of funds available to it under subsection (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

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

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

#### Article VII. Uniform Regulations And Forms

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

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

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

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

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

#### Article VIII. Interstate Audits

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

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

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise

being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident, provided that such state has adopted this article.

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

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

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

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

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

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

#### Article IX. Arbitration

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

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

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

states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

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

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

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

(7) The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

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

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

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

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

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

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

#### Article X. Entry Into Force And Withdrawal

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

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

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

#### Article XI. Effect On Other Laws And Jurisdiction

Nothing in this compact shall be construed to:

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

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

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

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

#### Article XII. Construction And Severability

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

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

**Section 3. Applicability.** [This act] applies to tax years beginning after June 30, 2021.

Approved May 11, 2021

## CHAPTER NO. 460

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR FISCAL YEAR ENDING JUNE 30, 2021; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2022 AND 2023; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Time limits.** The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

**Section 2. Appropriations.** The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program

Judiciary

Supreme Court Operations

Supporting Foster Youth and Families Through

the Pandemic	FY 2021	\$100,469	Federal
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All remaining fiscal year 2021 federal budget amendment authority for the district court workload assessment is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the state court improvement data program and for the state court improvement training program and for supporting foster youth and families through the pandemic is authorized to continue into federal fiscal year 2022.

District Court Operations

All remaining fiscal year 2021 federal budget amendment authority for the 8th judicial veterans treatment court is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the Missoula veterans court expansion and enhancement grant and the Montana supreme court fiscal year 2018 adult drug court implementation is authorized to continue into state fiscal year 2023.

All remaining fiscal year 2021 federal budget amendment authority for the adult drug court program and for the Yellowstone County family drug court expansion and for the 13th judicial district veterans treatment court expansion is authorized to continue into federal fiscal year 2023.

Secretary of State

Business and Government Services

All remaining fiscal year 2021 federal budget amendment authority for the help America vote grant and for the election security grants is authorized to continue into federal fiscal year 2023.

Office of Public Instruction

State Level Activities

All remaining fiscal year 2021 federal budget amendment authority for an innovative partnership to prepare rural school-based mental health services providers and for the troops-to-teachers program is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the project aware grant and for the school violence prevention grant program and for the elementary and secondary school emergency relief fund is authorized to continue into federal fiscal year 2022.

Local Education Activities

All remaining fiscal year 2021 federal budget amendment authority for the project aware grant and for the elementary and secondary school emergency relief fund is authorized to continue into federal fiscal year 2022.

Department of Justice

Legal Services Division

All remaining fiscal year 2021 federal budget amendment authority for prescription drug prevention is authorized to continue into federal fiscal year 2023.

Motor Vehicle Division

All remaining fiscal year 2021 federal budget amendment authority for the driver's license program implementation grant is authorized to continue into federal fiscal year 2023.

Highway Patrol

High Intensity Drug Trafficking Areas

Program	FY 2021	\$62,780	Federal
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All remaining fiscal year 2021 federal budget amendment authority for the peer support project and for the criminal interdiction program is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the anti-methamphetamine program and for the high intensity drug trafficking areas program is authorized to continue into state fiscal year 2023.

Division of Criminal Investigations

Criminal Interdiction Program	FY 2021	\$42,750	Federal
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High Intensity Drug Trafficking Areas

Program	FY 2021	\$82,500	Federal
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Organized Crime Drug Enforcement

Task Force	FY 2021	\$13,500	Federal
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Drug Enforcement Administration

Grants	FY 2021	\$96,860	Federal
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All remaining fiscal year 2021 federal budget amendment authority for drug enforcement administration grants and for the criminal interdiction program and for the organized crime drug enforcement task force is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the cooperative disability investigations unit is authorized to continue into federal fiscal year 2023.

All remaining fiscal year 2021 federal budget amendment authority for the anti-methamphetamine program and for the high intensity drug trafficking areas program is authorized to continue into state fiscal year 2023.

Forensic Science Division

National Center on Forensics Award	FY 2021	\$85,346	Federal
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All remaining fiscal year 2021 federal budget amendment authority for the fiscal year 2019 DNA capacity enhancement and backlog reduction program and for the fiscal year 2018 DNA capacity enhancement and backlog reduction program and for the national center on forensics award is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the fiscal year 2020 DNA backlog reduction program is authorized to continue into federal fiscal year 2022.

## Public Service Commission

## Public Service Regulation Program

All remaining fiscal year 2021 federal budget amendment authority for the underground natural gas storage grant is authorized to continue into state fiscal year 2022.

## Montana Arts Council

## Promotion of the Arts

All remaining fiscal year 2021 federal budget amendment authority for the national endowment of the arts strategic plan is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the supplemental national endowment of the arts strategic plan is authorized to continue into state fiscal year 2023.

## Montana State Library

## Statewide Library Resources

All remaining fiscal year 2021 federal budget amendment authority for framing the future advanced strategic planning for small and rural libraries and for digital mapping of wetlands is authorized to continue into federal fiscal year 2022.

## Montana Historical Society

## Administration Program

## Merchandise Authority

FY 2021	\$32,000	Proprietary
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All remaining fiscal year 2021 federal budget amendment authority for the historic preservation grant program is authorized to continue into federal fiscal year 2022.

## Research Center

## Newspaper Repository Authority

FY 2021	\$40,000	Proprietary
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## Board Programming Grant

FY 2021	\$11,996	Federal
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All remaining fiscal year 2021 federal budget amendment authority for green paradise: the story of a camping trip and for the board programming grant is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for upgrades to the mechanical system is authorized to continue into federal fiscal year 2022.

## Publications

## Publications Authority

FY 2021	\$40,000	Proprietary
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## Historic Preservation Program

## Historic State Preservation Office

## Authority

FY 2021	\$20,000	Proprietary
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All remaining fiscal year 2021 federal budget amendment authority for documenting and sharing Montana's statewide African American heritage is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the historic preservation grant programs is authorized to continue into federal fiscal year 2022.

## Department of Fish, Wildlife, and Parks

## Fisheries Division

All remaining fiscal year 2021 federal budget amendment authority for the Painted Rocks reservoir is authorized to continue into federal fiscal year 2023.

## Enforcement Division

All remaining fiscal year 2021 federal budget amendment authority for travel plan monitoring is authorized to continue into federal fiscal year 2023.

## Wildlife Division

## Pronghorn Movement and Population

## Ecology

FY 2021	\$100,000	Federal
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All remaining fiscal year 2021 federal budget amendment authority for the endangered wildlife program and for the migratory song birds grazing study and for cooperative weed management and for wildlife disease surveillance and for the working grassland initiative and the fisher study and for the dusky grouse monitory study and for the Blackfoot-Clearwater elk study and the 2018 legacy administration grant and for the wildlife restoration grant program and for acoustic monitoring to assess impacts of white-nose syndrome is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the grizzly bear trend survey and for the golden eagle survey and the 2020 legacy administration grant is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for game bird hunting access and for assessing habitat conservation, enhancement, and restoration impacts is authorized to continue into state fiscal year 2023.

All remaining fiscal year 2021 federal budget amendment authority for pronghorn movement and population ecology and for ungulate movements and spatial ecology and for implementation of prairie pothole joint venture activities and for the elk recreation study and for elk habitat management and for the wood bottom habitat management plan and for the sage grouse grazing study and for the dusky grouse monitoring study is authorized to continue into federal fiscal year 2023.

#### Parks Division

##### Geological Survey of Headwaters

State Park	FY 2021	\$6,800	Federal
Council Grove Sign	FY 2021	\$5,000	Federal

All remaining fiscal year 2021 federal budget amendment authority for the Smith River corridor management and for the geological survey of Headwaters State Park is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the council grove sign is authorized to continue into federal fiscal year 2023.

#### Capital Outlay

All remaining fiscal year 2021 federal budget amendment authority for the lost trail legacy project and wetland enhancement in Phillips County is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the Blackfoot community conservation area wildlife habitat improvement project is authorized to continue into state fiscal year 2023.

All remaining fiscal year 2021 federal budget amendment authority for the upper Ruby wildlife habitat improvement project and for the North Hills rattlesnake wildlife habitat improvement project is authorized to continue into federal fiscal year 2023.

#### Communication and Education Division

All remaining fiscal year 2021 federal budget amendment authority for aquatic invasive species prevention and education is authorized to continue into federal fiscal year 2023.

#### Administration

All remaining fiscal year 2021 federal budget amendment authority for wildlife surveys on the Flathead Indian Reservation is authorized to continue into federal fiscal year 2023.

#### Department of Environmental Quality

##### Water Quality Division

All remaining fiscal year 2021 federal budget amendment authority for lead testing in schools and childcare programs is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for improving water quality and for the 2017 nonpoint source project grant is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the 2018 nonpoint source project grant and for the section 106 monitoring initiative grant is authorized to continue into state fiscal year 2023.

All remaining fiscal year 2021 federal budget amendment authority for protecting unimpaired water and for the 2019 and 2020 nonpoint source project grant is authorized to continue into federal fiscal year 2023.

Waste Management and Remediation Division

All remaining fiscal year 2021 federal budget amendment authority for the abandoned mine lands reclamation program is authorized to continue into state fiscal year 2022.

Air, Energy, and Mining Division

All remaining fiscal year 2021 federal budget amendment authority for the Zortman/Landusky water treatment and reclamation and for air monitoring and for pollution prevention and resource efficiency is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the coal application program manager is authorized to continue into state fiscal year 2023.

Department of Transportation

Highway and Engineering

Bridge Replacement and

Rehabilitation

FY 2021 \$30,577,957 Federal

All remaining fiscal year 2021 federal budget amendment authority for the 2018 federal-aid highway program is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the 2019 federal-aid highway program and for the 2020 federal-aid highway program and for bridge and highway reconstruction and for the technology and innovation development program and for bridge replacement and rehabilitation is authorized to continue into federal fiscal year 2023.

Motor Carrier Services Division

All remaining fiscal year 2021 federal budget amendment authority for implementing the 2020 high priority grant is authorized to continue into federal fiscal year 2023.

Aeronautics Division

All remaining fiscal year 2021 federal budget amendment authority for the Yellowstone airport improvement program and operations grant and the Lincoln airport improvement program and operations grant is authorized to continue into federal fiscal year 2023.

Rail, Transit, and Planning

All remaining fiscal year 2021 federal budget amendment authority for the bus facility award is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the coronavirus rural program award is authorized to continue into federal fiscal year 2023.

Department of Livestock

Animal Health Division

Animal Disease Traceability

FY 2021 \$34,804 Federal

All remaining fiscal year 2021 federal budget amendment authority for captive bolt euthanasia training is authorized to continue into state fiscal year 2022.

## Department of Natural Resources and Conservation

## Conservation and Resource Development Division

All remaining fiscal year 2021 federal budget amendment authority for the drinking water state revolving fund capitalization grant and for the water pollution control capitalization grant and for assessing and mitigating stormwater impacts in the Flathead basin and for quagga mussel support for the upper Columbia conservation commission is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for characterizing septic leachate pollution in the Flathead basin is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the water pollution control capitalization grant and for the drinking water state revolving capitalization grant is authorized to continue into state fiscal year 2023.

All remaining fiscal year 2021 federal budget amendment authority to improve range health is authorized to continue into federal fiscal year 2023.

## Water Resources Division

## Water Rights Administrative Support

## Within the Yellowstone Controlled

Groundwater Area	FY 2021	\$23,000	Federal
Drought Adaptation and Response Plan	FY 2021	\$200,000	Federal

All remaining fiscal year 2021 federal budget amendment authority for all the 2017 cooperating technical partners awards and for all the 2018 cooperating technical partners awards and for the 2020 aquifer data project is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for all the 2020 cooperating technical partners awards and for all the 2019 cooperating technical partners awards and for water rights administrative support within the Yellowstone controlled groundwater area and for the drought adaptation and response plan is authorized to continue into federal fiscal year 2023.

## Forest and Trust Lands

2019 Hazardous Fuel Reduction	FY 2021	\$12,000	Federal
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All remaining fiscal year 2021 federal budget amendment authority for firesafe Flathead and for bark beetle award and for the 2018 consolidated payments grant and the Northern Rockies coordination center and for Dillon prescribed fire assistance and for shared stewardship and for fuel reduction activities initiated by the Helena-Lewis and Clark National Forest is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for providing forestry technical assistance and for 2018 hazardous fuel reduction and for Fort Peck recreation area and Sourdough Creek municipal watershed assistance and for the wood products and biomass program is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for stewardship of Red Mountain Chessman Flume and for equipment inspectors and for plains dispatch prescribed fire assistance and for the 2019 consolidated payments grant and for western bark beetle forest health and for 2019 hazardous fuel reduction is authorized to continue into state fiscal year 2023.

All remaining fiscal year 2021 federal budget amendment authority for the 2020 consolidated payments grant and the statewide good neighbor program and for planning and implementation of forest land-related conservation activities and for the good neighbor authority capacity building and the good



Housing Division

All remaining fiscal year 2021 federal budget amendment authority for the housing choice voucher supplemental program and for the mainstream administrative fees program and for the moderate rehabilitation program is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the 811 project rental assistance demonstration program is authorized to continue into federal fiscal year 2023.

Department of Labor and Industry  
Workforce Services Division

All remaining fiscal year 2021 federal budget amendment authority for employment recovery is authorized to continue into state fiscal year 2022.

Unemployment Insurance Division

Pandemic Unemployment Fraud

Investigation	FY 2021	\$1,215,000	Federal
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All remaining fiscal year 2021 federal budget amendment authority for the pandemic unemployment fraud investigation and for the covid-19 special administrative grant funds and for pandemic unemployment assistance operations and for federal pandemic unemployment compensation operations and for federal pandemic emergency unemployment compensation operations is authorized to continue into state fiscal year 2022.

Office of Community Services

All remaining fiscal year 2021 federal budget amendment authority for training and technical assistance is authorized to continue into state fiscal year 2022.

Department of Public Health and Human Services

Human and Community Services

Emergency Solutions Grant Program	FY 2021	\$6,742,481	Federal
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Second allocation of the Community Services

Block Grant	FY 2021	\$3,327,308	Federal
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Increase to Supplemental Nutrition Assistance

Program	FY 2021	\$17,777,309	Federal
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Emergency Food Assistance Program	FY 2021	\$236,229	Federal
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Food Distribution Program on Indian

Reservations	FY 2021	\$103,685	Federal
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Supplemental Nutrition Assistance

Program	FY 2021	\$33,335,403	Federal
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Pandemic Electronic Benefit Transfer

Administrative Funding Grants	FY 2021	\$763,251	Federal
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All remaining fiscal year 2021 federal budget amendment authority for the emergency food assistance program and for the pandemic electronic benefit transfer administrative funding grants is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the community services block grant and for the emergency solutions grant program and for the food distribution program on Indian reservations is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for housing opportunities for persons with AIDS is authorized to continue into state fiscal year 2023.

All remaining fiscal year 2021 federal budget amendment authority for food distribution on Indian reservations and for the second allocation of the community services block grant is authorized to continue into federal fiscal year 2023.

### Child and Family Services

John H. Chafee Foster Care Program for Successful Transition to Adulthood	FY 2021	\$2,978,840	Federal
Chafee Education and Training Vouchers Program	FY 2021	\$432,971	Federal
Federal Medical Assistance Percentage	FY 2021	\$230,461	Federal
Child Welfare Services	FY 2021	\$108,741	Federal

All remaining fiscal year 2021 federal budget amendment authority for child welfare services is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the adoption and legal guardian incentive payments program and for the John H. Chafee foster care program for successful transition to adulthood and for the Chafee education and training vouchers program is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for promoting safe and stable families is authorized to continue into federal fiscal year 2023.

### Public Health and Safety

Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases	FY 2021	\$846,000	Federal
Environmental Health Education and Assessment Program	FY 2021	\$340,124	Federal

All remaining fiscal year 2021 federal budget amendment authority for epidemiology and laboratory capacity for prevention and control of emerging infectious diseases and for the public health crisis response and for HIV care formula grants and for the environmental health education and assessment program is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for epidemiology and laboratory capacity for prevention and control of emerging infectious diseases is authorized to continue into state fiscal year 2023.

All remaining fiscal year 2021 budget amendment authority for covid-19 vaccination planning and implementation is authorized to continue into federal fiscal year 2023.

### Quality Assurance Division

Supplemental Nursing Home Survey and Certification Activities	FY 2021	\$205,580	Federal
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All remaining fiscal year 2021 federal budget amendment authority for the supplemental nursing home survey and certification activities is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for nursing home survey and certification activities is authorized to continue into federal fiscal year 2023.

### Developmental Services Division

Federal Medical Assistance Percentage	FY 2021	\$1,119,327	Federal
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Health Resources Division			
Expanding Early Identification and Access to Perinatal Mental Health	FY 2021	\$93,851	Federal
Federal Medical Assistance Percentage	FY 2021	\$2,777,342	Federal

All remaining fiscal year 2021 federal budget amendment authority for expanding early identification and access to perinatal mental health is authorized to continue into state fiscal year 2022.

### Senior and Long-Term Care Division

Consolidated Appropriations Act	FY 2021	\$840,000	Federal
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Enhance Adult Protective Services	FY 2021	\$704,100	Federal
Aging Ombudsman Program	FY 2021	\$20,000	Federal

All remaining fiscal year 2021 federal budget amendment authority for the enhancement of adult protective services system is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the Alzheimer's disease support services program and for the community choice partnership is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the adult protective services focusing on opioid misuse and for the consolidated appropriations act and to enhance adult protective services and for the aging ombudsman program is authorized to continue into federal fiscal year 2022.

Early Childhood and Family Support

Sexual Risk Avoidance Education	FY 2021	\$159,264	Federal
Pediatric Mental Health Care Access Program	FY 2021	\$508,329	Federal
Maternal Health Innovation Program	FY 2021	\$2,253,794	Federal

All remaining fiscal year 2021 federal budget amendment authority for the pediatric mental health care access program and for the maternal health innovation program is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the maternal, infant, and childhood home visiting program and for sexual risk avoidance education is authorized to continue into federal fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the childcare and development block grant is authorized to continue into federal fiscal year 2023.

Addictive & Mental Disorders

Emergency COVID-19 Project	FY 2021	\$2,859,649	Federal
Block Grants for Community Mental Health Services	FY 2021	\$2,531,162	Federal
Substance Abuse Prevention and Treatment Block Grant	FY 2021	\$6,530,972	Federal
Federal Medical Assistance Percentage	FY 2021	\$449,974	Federal

All remaining fiscal year 2021 federal budget amendment authority for the zero suicide initiative and for the partnership for success grant is authorized to continue into state fiscal year 2022.

All remaining fiscal year 2021 federal budget amendment authority for the emergency COVID-19 project and for block grants for community mental health services and for the substance abuse prevention and treatment block grant is authorized to continue into state fiscal year 2023.

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

Approved May 12, 2021

## CHAPTER NO. 461

[HB 5]

AN ACT GENERALLY REVISING LAWS RELATED TO CAPITAL DEVELOPMENT PROJECTS; APPROPRIATING MONEY FOR MAJOR REPAIR AND CAPITAL DEVELOPMENT PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2023; PROVIDING APPROPRIATIONS FOR OPERATIONS AND MAINTENANCE; PROVIDING DEFINITIONS; PROVIDING FOR A TRANSFER OF FUNDS; PROVIDING FOR AN APPROPRIATION FROM

THE MONTANA HERITAGE CENTER ACCOUNT; PROVIDING AN APPROPRIATION; AMENDING SECTION 2, CHAPTER 422, LAWS OF 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Definitions.** For the purposes of [sections 1 through 9], unless otherwise stated, the following definitions apply:

(1) "Authority only" means approval provided by the legislature to expend money that does not require an appropriation, including grants, donations, auxiliary funds, proprietary funds, nonstate funds, and university funds.

(2) "Major repair" means capital projects provided for in 17-7-201(7).

(3) "Capital development" means capital projects provided for in 17-7-201(2).

(4) "Capital project" means the planning, design, renovation, construction, alteration, replacement, furnishing, repair, improvement, site, utility, or land acquisition project provided for in [sections 1 through 9].

(5) "LRBP major repair" or "LRBP MR" means the long-range building program major repair account in the capital projects fund type provided for in 17-7-221.

(6) "LRBP capital development" means the long-range building program capital development account in the capital projects fund type provided for in 17-7-209.

(7) "Other funding sources" means money other than LRBP money, state special revenue, or federal special revenue that accrues to an agency under the provisions of law.

(8) "SBCEP" means funds from the state building energy conservation program account in the capital projects fund type which may be utilized on either or both major repair and capital development projects.

**Section 2. Major repair projects appropriations and authorizations.**

(1) The following money is appropriated to the department of administration for the indicated major repair projects from the indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to adjust capital project amounts within the legislative intent of the major repair account-funded projects, subject to available revenues, if approved by the office of budget and program planning, and transfer the appropriations, authority, or both among the necessary fund types for these projects:

Agency/Project	LRBP MR Fund	State Special Revenue	Federal Special Revenue	Authority Only Sources	Total
OPI MT Learning Center Civil Infrastructure Upgrades	300,000				300,000
MT Tech Heating System Upgrades Phase 1	2,480,000				2,480,000
UM FLBS Sewer Treatment Plant	1,750,000				1,750,000
MSU Reid Hall Fire System Upgrades	1,700,000				1,700,000
UM Urey Lecture Hall Roof	350,000				350,000
MSDB Upgrade Sprinkler System in Bitterroot Building	150,000				150,000
MSP Unit F Boiler System / Controls	230,000				230,000

UM Mansfield Library Roof Replacement	1,200,000	1,200,000
MSU Haynes Hall Lab Ventilation Upgrades	1,600,000	1,600,000
MT Tech Fire Alarm Upgrades	200,000	200,000
MSDB Sprinkler Systems—Mustang Center and Dining Room	150,000	150,000
MSU Montana Hall Fire System Upgrades	455,000	455,000
MSU BLGS Art Annex Safety and System Upgrades	1,200,000	1,200,000
UM-HC Donaldson Building HVAC Upgrades	1,000,000	1,000,000
UM-W Heating System Replacement and Repair	2,495,000	2,495,000
UM Stone Hall Roof Replacement	400,000	400,000
MSU-N Vande Bogart Library Roof Replacement	325,000	325,000
DMA Great Falls AFRC Roof Replacement	204,350	613,050
DOC MSP Replace Fixtures—Cell Combo Units on High Side Units	1,013,480	1,013,480
DMA Kalispell AFRC Roof Replacement	357,496	642,104
DMA Lewistown RC Roof Replacement	91,500	91,500
DOC MCE Laundry		1,300,000
DPHHS MSH Foundation Repair	200,000	200,000
MSU Lewis Hall Roof Replacement	1,600,000	1,600,000
DPHHS MSH Roof Replacement Main Building	600,000	600,000
MSU-N Auto Tech Building System Improvements	535,000	535,000
DOC Finalize Departmental Master Plan	575,000	575,000
MSDB Card Lock System	120,000	120,000
UM Clapp Building Elevator Modernization	300,000	300,000
MSDB Replace Lift in Bitterroot Building	80,000	80,000
DPHHS MMHNCC Roof Replacement	550,000	550,000
DMA Billings AFRC Backup Generator	213,500	640,500
DMA Libby RC Loading Ramp Expansion	38,125	114,375
MSDB Replace Roof on Cottage Buildings	530,000	530,000

DOC PHYCF Door Control Systems	350,000	350,000
DOC MWP Door Control System	520,000	520,000
UM-W Roof Replacements	450,000	450,000
MT Tech Roof Replacements	800,000	800,000
DOC Xanthopolous Building Door Control System	350,000	350,000
MSU-N Brockmann Center HVAC and Energy Project	855,000	855,000
DNRC Swan Unit Office Siding and House Wrap	210,000	210,000
DNRC Stillwater Unit Shop Remodel	50,000	50,000
DPHHS MMHNCC New Flooring D-Wing	174,262	174,262
COVID-19 Remote and Office Workspace Study and Planning Fund	1,400,000	1,400,000
Legislative Staff Workspace Renovation and Reorganization	500,000	500,000
Removal and Replacement of Legislative Chambers Carpeting	1,000,000	1,000,000
DPHHS MVH SCU Courtyard, Columbia Falls	75,000	75,000
State special revenue funds consist of cigarette taxes provided for in 16-11-119.		
DPHHS MVH Roof Resurface, Columbia Falls	144,000	144,000
State special revenue funds consist of cigarette taxes provided for in 16-11-119.		
DPHHS EMVH Facia Replacement, Glendive	200,000	200,000
State special revenue funds consist of cigarette taxes provided for in 16-11-119.		
DPHHS MVH Building Major Maintenance, Columbia Falls	117,000	117,000
State special revenue funds consist of cigarette taxes provided for in 16-11-119.		
DOA VRF Piping Replacement, Scott Hart Building	900,000	900,000
State special revenue funds consist of capital land grant funds provided for in 18-2-107.		
DOA Executive Residence Renovation	440,500	440,500
State special revenue funds consist of capital land grant funds provided for in 18-2-107.		
DOA Mechanical Upgrade—5 South Last Chance Gulch	575,000	575,000
State special revenue funds consist of capital land grant funds provided for in 18-2-107.		
DOA Mechanical Upgrade—2800 Airport Rd, DNRC Hangar	1,000,000	1,000,000

State special revenue funds consist of capital land grant funds provided for in 18-2-107.

DOA Capitol Complex, Campus-wide Facilities Repairs and Maintenance	400,000	400,000
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State special revenue funds consist of capital land grant funds provided for in 18-2-107. Funds may be used as determined by the department for energy savings, repairs, and non-routine maintenance needs.

(2) State special revenue fund appropriations to the department of administration from the capital land grant fund may be adjusted among the indicated capital projects within the legislative intent, subject to available revenue, if approved by the office of budget and program planning.

(3) The following money is appropriated to the department of military affairs for the indicated major repair projects from the indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of military affairs is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

Agency/Project	LRBP MR Fund	State Special Revenue	Federal Special Revenue	Authority Only Sources	Total
Ft. Harrison Building 530 Roof Replacement			244,000		244,000
Post Engineers Remodel			473,850		473,850
Billings FMS Compound Fencing			99,450		99,450
FTH Range Vault Latrines			99,450		99,450
AASF Waste Tanks			137,250		137,250
Helena FMS MEP Rigid Concrete Paving Expansion			434,625		434,625
LSH Concrete Loading Ramp			122,000		122,000
Missoula FMS Rigid Concrete Paving			106,750		106,750

**Section 3. Capital development projects appropriations and authorizations.** (1) The following money is appropriated to the department of administration for the indicated capital development projects from the indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

Agency/Project	LRBP CD Fund	State Special Revenue	Federal Special Revenue	Authority Only Sources	Total
MT Tech Heating System Upgrades Phase 2			3,520,000		3,520,000
MAES Greenhouse Laboratories			2,000,000		2,000,000
Capitol Complex Building Renovations for Remote and Office Workspace Improvements			10,000,000		10,000,000
Mazurek Building Renovations			3,000,000		3,000,000
DMA Butte Readiness Center			801,249	2,195,751	2,997,000

Capital development funds are an increase to the 5,000,000 of general obligation bonds, and the federal special revenue is an increase to 17,000,000, both approved in Chapter 476 of the Session Laws of 2019 for "Butte-Silver Bow County Armory".

DMA Havre Unheated Storage Building			
	105,530	316,590	422,120
DMA Billings AFRC Unheated Storage Expansion			
	77,013	231,038	308,051
DMA Malta Vehicle Maintenance Shop			
		17,877,000	17,877,000
DOA State Health Lab Renovation, Capitol Complex			
		6,000,000	6,000,000
DOA Commodities Warehouse Expansion, Capitol Complex			
		1,779,230	1,779,230
DOC Food Factory Expansion, Authority Increase			
		500,000	500,000
Authority Only is an increase to 3,000,000 approved in Chapter 422 of the Session Laws of 2019 for "Food Factory Expansion".			
MDT Terry 3-Bay ESB	400,000		400,000
MDT White Sulphur 8-Bay ESB			
	1,250,000		1,250,000
MDT Phillipsburg 5-Bay ESB			
	825,000		825,000
MDT Custer 5-Bay ESB	825,000		825,000
MDT Havre Welding Shop			
	400,000		400,000
MDT Billings Welding Shop/Tow Plow Storage			
	650,000		650,000
MDT Harlem 6-Bay ESB			
	915,000		915,000
MDT Lincoln Airport Snow Removal Building			
	450,000		450,000
MDT Remodel/Expand Yellowstone Airport			
	10,000,000		10,000,000
Federal special revenue is an increase to 13,500,000 approved in Chapter 422 of the Session Laws of 2019 for "MDT Remodel/Expand Yellowstone Airport Terminal".			
FWP Havre Area Office	1,760,000	500,000	2,260,000
FWP Montana Wild Avian Rehabilitation Building			
		600,000	600,000
Southwest Montana Veterans Home Sixth Cottage			
		4,000,000	4,000,000
UM Music Building Renovations		6,000,000	6,000,000
UM Rankin Hall Building Renovations		6,000,000	6,000,000
UM Mansfield Library Renovations		6,000,000	6,000,000
MSU Instructional Space Upgrades		2,000,000	2,000,000
MSU Renne Library Renovations		5,000,000	5,000,000
UM Montana Museum for Art and Culture		2,000,000	2,000,000
Authority only is an increase to 6,000,000 approved in Chapter 560 of the Session Laws of 2005 for "New Gallery Space, UM-Missoula".			
DOJ MLEA Scenario Training Building			
	3,851,475		3,851,475

(2) The following money is appropriated to the department of military affairs for the indicated capital development projects from the indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of military affairs is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

Agency/Project	LRBP CD Fund	State Special Revenue	Federal Special Revenue	Authority Only Sources	Total
DMA Ft. Harrison Barracks			6,000,000		6,000,000
DMA FTH Bldg 64 RTI Addition/Remodel			2,164,500		2,164,500
DMA FTH Bldg 1001 Draw Yard			811,980		811,980
DMA FTH Rail Head Yard			811,980		811,980
DMA LSHTA Barracks #1			2,164,500		2,164,500

(3) (a) Pursuant to 17-7-210, if construction of a new facility requires an immediate or future increase in state funding for program expansion or operations and maintenance, the legislature may not authorize the new facility unless it also appropriates funds for the increase in state funding for program expansion and operations and maintenance. To the extent allowed by law, at the end of each fiscal year following approval of a new facility but prior to receipt of its certificate of occupancy, the appropriation made in this subsection reverts to its originating fund. The appropriation is not subject to the provisions of 17-7-304.

(b) Subject to subsection (3)(d), the following money is appropriated for the biennium beginning July 1, 2021, to the indicated agency from the indicated sources for program expansion or operations and maintenance for the indicated new facility:

Department of Military Affairs					
Havre Unheated Storage Building			\$250	from the general fund and \$250 from federal special revenue funds	
Billings AFRC Unheated Storage Expansion			\$300	from the general fund and \$300 from federal special revenue funds	
Department of Justice					
MLEA Scenario Training Building			\$150,000	from the general fund	
Department of Fish, Wildlife, and Parks					
Havre Area Office			\$26,261	from state special revenue funds	
Department of Public Health and Human Services					
Southwest Montana Veterans Home Sixth Cottage			\$1,200,000	from state special revenue funds	

(c) It is the legislature's intent that the appropriations in this subsection become part of the respective agency's base budget for the biennium beginning July 1, 2021.

(d) Appropriations in subsection (3)(b) are contingent on the passage and approval of a bill that includes an appropriation for the construction of the indicated projects in subsection (3)(b).

(4) (a) As part of the COVID-19 remote and office workspace study and planning, the department of justice, the Montana state library, and the judicial branch shall participate in a working group for the Mazurek building led by the department of administration.

(b) The working group shall:

(i) determine the minimum space needs of the current occupants of the Mazurek building, including whether the footprint of the state law library can be reduced and opportunities exist to move department of justice staff to the building from private leased space. Tenants should determine whether remote work is a viable option for employees, and the working group should look for opportunities to reduce agency space.

(ii) determine the space configuration that is most efficient and effective for each tenant and its mission. To minimize disruption to the agencies and minimize costs, the configurations should minimize moves from current space and remodeling costs.

(iii) consider how to use the unoccupied space in the building for the needs of the agencies to meet their minimum space needs. If the agencies do not use all of the unoccupied space, then the remaining space should be maintained in a sufficient block to allow for an additional agency tenant.

(c) Prior to the commencement of any renovations on the Mazurek building, the budget director must approve the renovation plan.

**Section 4. Capital improvement projects – appropriations and authorizations.** (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of fish, wildlife, and parks is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Authority Only Source	Total
Future Fisheries		1,320,000			1,320,000
FAS Site Protection		2,050,000		400,000	2,450,000
Dam Maintenance		60,000			60,000
Community Fishing Ponds		200,000			200,000
Wildlife Habitat Maintenance		1,147,500	2,442,500		3,590,000
Forest Management		65,000			65,000
Migratory Bird Program		650,000			650,000
Upland Game Bird Enhancement Program		650,000			650,000
Smith River Corridor		200,000			200,000
Wildlife Habitat Improvement Program			2,000,000		2,000,000
Yellow Bay State Park Site Upgrade		1,200,000			1,200,000
Cedar Islands Infrastructure Upgrades		200,000			200,000
Hell Creek State Park		100,000	300,000		400,000
Administrative Facilities Repairs and Major Maintenance		1,762,150	500,000		2,262,150
Flathead Lake Recreation Access		4,959,000	2,900,000		7,859,000
Fish Connectivity		200,000	1,025,000	615,000	1,840,000
Home to Hunt Access		850,000			850,000
Interpretation and Exhibit Upgrades		500,000			500,000
Lewis and Clark Caverns		600,000			600,000
Lower Yellowstone Access		4,000,000			4,000,000
Shooting Ranges Statewide		250,000	2,250,000		2,500,000

Grant Programs	3,390,000	6,000,000	9,390,000
Diversified Lodging	500,000		500,000
Milltown SP	125,000	125,000	250,000
Fort Owen SP		390,000	390,000
Parks Maintenance	2,500,000		2,500,000
Hatchery Maintenance	7,600,000		7,600,000
Canyon Ferry Fish Cleaning Station		500,000	500,000
Tiber Reservoir Fish Cleaning Station		500,000	500,000
Smith River Eden Site Improvement		600,000	600,000

(2) Authority is granted to the Montana university system for the purpose of making capital improvements to campus facilities, statewide. Authority only funds may include donations, grants, auxiliary funds, proprietary funds, nonstate funds, and university funds. All costs for the operations and maintenance of any improvements constructed under this authorization must be paid by the Montana university system from nonstate sources:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Authority Only Source	Total
General Spending Authority, MUS					
All Campuses			20,000,000		20,000,000

(3) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities. All costs for the operations and maintenance of any improvements constructed with these funds must be paid by the department of military affairs from nonstate sources:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Authority Only Sources	Total
Federal Spending Authority					
			3,000,000		3,000,000

(4) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements to statewide facilities as indicated:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Authority Only Source	Total
Maintenance, Repair, and Small Projects, Statewide					
			2,300,000		2,300,000

(5) The following money is appropriated to the department of environmental quality in the indicated amount from state building energy conservation funds for the purpose of making capital improvements as indicated:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Authority Only Source	Total
Energy Improvements, Statewide					
			3,700,000		3,700,000

State special revenue funds consist of state building energy conservation funds of the capital fund type.

(6) The following money is appropriated to the department of environmental quality in the indicated amount for the purpose of leaking petroleum tank remediation to address risks to human health or the environment at petroleum

sites where there is no readily apparent potentially liable person or entity that is financially viable:

Agency/Project	LRBP MR Fund	State Special Revenue	Federal Special Revenue	Authority Only Sources	Total
Remediation of Leaking Petroleum Tanks		2,000,000			2,000,000

**Section 5. Land acquisition appropriations and authorizations.**

The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreements. The department of fish, wildlife, and parks is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Authority Only Source	Total
FAS Acquisitions		780,000			780,000
Habitat Montana		9,550,000	2,000,000		11,550,000
Big Horn Sheep Habitat		320,000			320,000

**Section 6. Planning and design.** The department of administration may proceed with the planning and design of capital projects in [either or both sections 2 and 3] prior to the receipt of other funding sources. The department may use interentity loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

**Section 7. Capital projects -- contingent funds.** If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the project for bid until a financial plan and agreement with the agency has been approved by the director of the department of administration. A financial plan and agreement may not be approved by the director if:

- (1) the level of funding and authorization provided under the financial plan and agreement deviates substantially from the funding level provided in [either or both sections 2 and 3] for that project; or
- (2) the scope of the project is substantially altered or revised from the concept and intent for that project as presented to the 67th legislature.

**Section 8. Review by department of environmental quality.** The department of environmental quality shall review capital projects authorized in [either or both sections 2 and 3] for potential inclusion in the state building energy conservation program (SBCEP) under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy or utility savings and improvements, that project must be submitted to the energy conservation program for funding consideration by the SBCEP. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the capital project. Agencies must be notified of potential funding after the review and are obligated to utilize the SBCEP funding, if available.

**Section 9. Appropriation.** There is appropriated \$41 million from the account in the capital projects fund established in 22-3-1303 to the department of administration in accordance with 17-7-212 for capital construction of the Montana heritage center. Any funds in excess of \$41 million in the account must be transferred to the general fund and the account closed upon completion of the project.

**Section 10. Increase in state funding for program expansion or operations and maintenance.** If an immediate or future increase in state funding for program expansion or operations and maintenance is required for a new facility in [section 3] but the increase is not appropriated by the 67th legislature, the new facility in [section 3] is not appropriated or authorized as provided in 17-7-210.

**Section 11. Legislative consent.** The appropriations authorized in [sections 1 through 9] constitute legislative consent for the capital projects contained in [sections 1 through 9] within the meaning of 18-2-102.

**Section 12. Transfer of funds.** By July 1, 2021, the state treasurer shall transfer \$2,000,000 from the general fund to a state special account for the purpose of leaking petroleum tank remediation.

**Section 13.** Section 2, Chapter 422, Laws of 2019, is amended to read:

**Section 2. Capital projects appropriations and authorizations.** The portion of section 2, Chapter 422, Laws of 2019, appropriating money from the indicated sources to the department of administration for transfer to the department of military affairs for capital projects is amended to read:

“DEPARTMENT OF MILITARY AFFAIRS

~~Indoor Firing Ranges Repurposing,~~

Statewide	<del>970,100</del>	<del>970,100</del>	<del>1,940,200</del>
PT/Rec Center Addition and Alteration, Ft. Harrison		2,000,000	2,000,000
Military Cemetery Expansions, Ft. Harrison and Missoula		4,000,000	4,000,000
FMS #3 Female Latrines and Remodel		702,900	702,900
FTH Weapons Cleaning Facility		1,700,000	1,700,000”

**Section 14. 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 15. Coordination instruction.** If both House Bill No. 632 and [this act] are passed and approved, then the allocations for the capital projects in [section 33] of House Bill No. 632 are considered miscellaneous revenue to the major repair long-range building program account as provided in 17-7-221(4) and apply toward meeting the minimum level of funding and appropriation required in 17-7-222.

**Section 16. Effective date.** [This act] is effective on passage and approval.

Approved May 12, 2021

## CHAPTER NO. 462

[HB 6]

AN ACT IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriations for renewable resource grants.** (1) For the biennium beginning July 1, 2021, there is appropriated to the department

of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to:

(a) \$100,000 for emergency projects grants to be awarded by the department over the course of the biennium;

(b) \$1,000,000 for planning grants to be awarded by the department over the course of the biennium;

(c) \$300,000 for irrigation development grants to be awarded by the department over the course of the biennium;

(d) \$300,000 for watershed grants to be awarded by the department over the course of the biennium;

(e) \$100,000 for private grants to be awarded by the department over the course of the biennium; and

(f) \$250,000 for an emergency grant for water system repairs at the Savage elementary school.

(2) The amount of \$4,500,000 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 for the biennium beginning July 1, 2021. The funds referred to in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts listed in subsection (4), subject to the conditions set forth in [sections 2 and 3] and the contingencies described in the renewable resource grant and loan program January 2021 report to the 67th legislature titled: Governor's Executive Budget Fiscal Years 2021-2023 Volume 6.

(3) Funds must be awarded up to the amounts approved in subsection (4) in the following listed order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. If at any time a grant sponsor determines that a project will not begin before June 30, 2023, the sponsor shall notify the department of natural resources and conservation. After all eligible projects are funded, remaining funds may be used for any renewable resource project authorized under this section.

(4) The following are the prioritized grant projects:

**RENEWABLE RESOURCE GRANT AND LOAN PROGRAM**

Applicant/Project	Amount
Milk River Joint Board of Control (St. Mary Diversion Dam and Headworks Design Completion)	\$125,000
Gardiner Park County Water and Sewer District (Wastewater System Improvements)	\$125,000
Greenfields Irrigation District (Arnold Coulee Hydroelectric Project)	\$125,000
Cooke City Water and Sewer District (Wastewater Collection and Treatment System Project)	\$125,000
Fort Smith Water and Sewer District (Wastewater System Improvements)	\$125,000
Montana Department of Corrections (Powell Dam Rehabilitation)	\$125,000
Lewis and Clark Conservation District (Beaver Creek Restoration, Phase 2)	\$125,000
Lockwood Water and Sewer District (CS3-1 Collection System Improvements, Phase 3)	\$125,000
Manhattan, Town of (Water Reclamation Facility Improvements, Phase 1)	\$125,000
Helena Valley Irrigation District (Terminal Wasteway and Lateral Automation and	

Measurement)	\$125,000
Thompson Falls, City of (Wastewater System Improvements, Phase 3)	\$125,000
Butte-Silver Bow Government (Basin Creek Dam #1 Rehabilitation)	\$125,000
Deer Lodge, City of (Wastewater Collection System Improvement)	\$125,000
Pondera County Conservation District (Dupuyer Creek Diversion Automation)	\$125,000
Teton Conservation District (Eureka Dam Safety Improvements)	\$125,000
Darby, Town of (Wastewater System Improvements)	\$125,000
Libby, City of (Wastewater System Improvements)	\$125,000
Montana Department of Natural Resources and Conservation – Water Resources Division	
(Ackley Lake Outlet Canal Rehabilitation)	\$125,000
Greenfields Irrigation District (SRS-71 Headworks and SRS Re-Regulation)	\$125,000
Valier, Town of (Wastewater System Improvements, Phase 3)	\$125,000
Greenfields Irrigation District (Spring Coulee Headworks Replacement)	\$125,000
Helena Valley Irrigation District (Lateral 11.9 Canal Conversion and Gate Rehabilitation)	\$125,000
Big Mountain County Sewer District (Wastewater Collection System Improvements)	\$125,000
Lower Musselshell County Conservation District (DMWUA Main Canal Diversion Gate Automation)	\$125,000
Bitterroot Conservation District (Bitterroot River Irrigation Management Study)	\$125,000
Wolf Point, City of (Wastewater Collection System Improvements)	\$125,000
Havre, City of (Clear Creek Court-Sanitary Sewer System Improvements)	\$125,000
Missoula, City of (Rattlesnake Creek Wilderness Dams Project)	\$125,000
Missoula County (Buena Vista Wastewater System Improvements, Phase 2)	\$125,000
Fort Belknap Indian Community (Milk River Diversion Gate Automation)	\$125,000
Shelby, City of (Water Infrastructure System Improvements)	\$125,000
Fort Peck Tribes (Frazer and Wiota Pump Automation and Monitoring)	\$125,000
Lower Willow Creek Irrigation District (Lower Willow Creek Reservoir Toe Drain Repair)	\$125,000
Hill County (Beaver Creek Dam Improvements)	\$125,000
East Helena, City of (Wastewater System Improvements)	\$125,000
Bitter Root Irrigation District (Water Efficiency, Modernization and Planning Study)	\$125,000

Beaverhead Conservation District (Irrigation Efficiency and Water Measurement)	\$125,000
Stillwater Conservation District (Mendenhall Ditch Intake and Drop Structure Rehabilitation)	\$125,000
Montana Department of Natural Resources and Conservation – Water Resources Division	
(Deadman’s Supply Canal Rehabilitation, Phase 2)	\$125,000
Lower Yellowstone Irrigation Project (Later V Check Structure and Lateral W Headgate Rehabilitation)	\$125,000
Montana Department of Natural Resources and Conservation – Water Resources Division	
(Two Dot Canal Rehabilitation)	\$125,000
Circle, Town of (Water System Improvements, Phase 3)	\$125,000
Roundup, City of (Water Main Improvements, Phase 6)	\$125,000
Clinton Irrigation District (Schoolhouse Lateral Pipeline Conversion)	\$125,000
Tenmile Creek Estates/Pleasant Valley Water and Sewer District (Wastewater System Improvements)	\$125,000
Carbon County Conservation District (Mutual Ditch Siphon Replacement)	\$125,000
Ekalaka, Town of (Water System Improvements)	\$125,000
Glen Lake Irrigation District (Rolling Hills Canal Rehabilitation)	\$125,000
Buffalo Rapids Irrigation Project District 1 (BRIPD1 Irrigation System Automation)	\$125,000
Flaxville, Town of (Water System Improvements)	\$125,000
North Valley County Water and Sewer District (Water System Improvements, Phase 1)	\$125,000
Buffalo Rapids Irrigation Project District 2 (BRIPD2 Lateral 1.6 Pipeline Conversion, Phase 2)	\$125,000
Petroleum County Conservation District (Petrolia Dam Outlet Works Headgate Replacement)	\$105,742
Harlowton, City of (Water System Improvements, Phase 5)	\$125,000
Alfalfa Valley Irrigation District (East Flynn Canal Rehabilitation, Phase 2)	\$125,000
Malta Irrigation District (Main Canal Lining – Wagner Ranch)	\$125,000
Glasgow Irrigation District (Spaniard Check Structure)	\$125,000
Lewistown, City of (Water System Improvements)	\$125,000
Glen Lake Irrigation District (Infrastructure Modernization Study)	\$125,000
Big Timber, City of (Water System Improvements)	\$125,000
Alberton, Town of (Water System Improvements)	\$125,000
Hysham Irrigation District	

(Intake Improvements) Three Forks, City of	\$125,000
(Water System Improvements) Choteau, City of	\$125,000
(Water System Improvements) Fairfield, Town of	\$125,000
(Water System Improvements) Huntley Project Irrigation District	\$125,000
(Yellowstone River Bank Stabilization) Sweet Grass County Conservation District	\$125,000
(Post-Kellogg Ditch Headworks Improvement) Lewistown, City of	\$125,000
(Ditch Rehabilitation) Joliet, Town of	\$125,000
(Water System Improvements) Richey, Town of	\$125,000
(Water System Improvements, Phase 1) Fort Benton, City of	\$125,000
(Water System Improvements) Big Sandy, Town of	\$125,000
(Stormwater System Improvements) Belgrade School District	\$125,000
(Ridge View Elementary Solar Project) Paradise Valley Irrigation District	\$115,046
(Milk Riverbank Stabilization)	\$125,000

**Section 2. Coordination of fund sources for grants to political subdivisions and local governments.** A project sponsor listed under [section 1(4)] may not receive funds from both the reclamation and development grants program and the renewable resource grant and loan program for the same project during the same biennium.

**Section 3. Condition of grants.** Disbursement of funds under [section 1] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Any changes in scope of work or budget subsequent to legislative approval may not change project goals and objectives. Changes in activities that would reduce the public or natural resource benefits as presented in department of natural resources and conservation reports and applicant testimony to the 67th legislature may result in a proportional reduction in the grant amount.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the program report to the legislature for the biennium ending June 30, 2023, or, in the case of planning grants issued under [section 1(1)], completion of conditions specified at the time of written notification of approved grant authority.

(3) The project sponsor must have a fully executed grant agreement with the department.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal as presented to the legislature.

**Section 4. Appropriations established.** There is appropriated to any entity of state government that receives a grant under [section 1] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to entities from prior bienniums are reauthorized for completion of contract work.

**Section 5. Approval of grants – completion of biennial appropriation.** The legislature, pursuant to 85-1-605, approves the renewable resource programs grants listed in [section 1]. The authorization of these grants constitutes a biennial appropriation from the natural resources projects state special revenue account established in 15-38-302.

**Section 6. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 7. Coordination instruction.** If both [this act] and an act that provides additional funding for renewable resource grant and loan program grants from a source other than the natural resources projects state special revenue account established in 15-38-302 are passed and approved, the projects listed in [section 1(4) of this act] that do not receive funding from the appropriations in [section 1(2) of this act] may receive funding from the appropriation in the other act designated for renewable resource grant and loan program grants in the order of completion of the conditions of [section 3 of this act] and to the extent that there is appropriation authority available.

**Section 8. 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 9. Effective date.** [This act] is effective July 1, 2021.

Approved May 12, 2021

## CHAPTER NO. 463

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; CREATING STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS ON LOANS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Authorization to provide loans.** (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsections (2) through (4) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the project in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years:

Loan	Amount
Department of Natural Resources and Conservation—Conservation and Resource Development Division	
Refinance Existing Debt or Rehabilitation of Infrastructure Facilities	\$8,000,000

(3) The interest rate for the projects in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years:

Loan	Amount
Central Montana Regional Water Authority Local Match for Central Montana Regional Water System	\$10,000,000
Dry-Redwater Regional Water Authority Local Match for Dry-Redwater Regional Water Projects	\$10,000,000

(4) The interest rate for the project in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years:

Loan	Amount
Lower Willow Creek Irrigation District Right Subdrain Repair Project	\$200,000

**Section 2. Projects not completing requirements – projects reauthorized.** (1) The legislature finds that the following renewable resource projects that were approved by the 64th legislature in Chapter 447, Laws of 2015, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2021. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsections (2) through (4) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
Dry Prairie Regional Water Authority Local Match for Dry Prairie Projects	\$10,000,000
North Central Regional Water Authority Local Match for North Central Projects	\$10,000,000

(3) The interest rate for the projects in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years:

Loan	Amount
Huntley Irrigation District Reauthorization Tunnel 2 and Canal System	\$3,500,000
Lockwood Irrigation District Box Elder Siphon, Pump Station, and Pump 3	\$750,000

(4) (a) The interest rate for the project in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years:

Loan	Amount
St. Mary's Diversion Project Local Share	\$40,000,000

(b) The loan in this subsection (4) is contingent on the following:

(i) the federal government entering into an agreement with the state that designates the federal and state share of the total project cost;

(ii) the forming of a water users' association of Montana users of the waters flowing from the Milk River that includes cities, towns, districts, water users' associations, and other unassociated individuals and entities; and

(iii) the water users' association demonstrating to the satisfaction of the department of natural resources and conservation its financial capacity, through water user fees or other available sources of funding, to pay the annual costs of the loan repayment over the term of the loan.

**Section 3. Coal severance tax bonds authorized.** (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal

amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 7]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed \$101,695,000 in the biennium beginning July 1, 2021, of which up to \$9,245,000 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the natural resources projects state special revenue account established in 15-38-302.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

**Section 4. Condition of loans.** (1) Disbursement of funds under [sections 1 and 2] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report;

(d) execution of a loan agreement with the department of natural resources and conservation; and

(e) accomplishment of other specific requirements considered necessary by the department of natural resources and conservation to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department of natural resources and conservation a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

**Section 5. Private and discount purchase of loans.** Loans to political subdivisions and local government entities pursuant to [sections 1 and 2] and bonds, warrants, and notes issued in evidence of those loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

**Section 6. Appropriations established.** For any entity of state government that receives a loan under [section 1 or 2], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation for the biennium beginning July 1, 2021.

**Section 7. Creation of state debt – two-thirds vote required – appropriation of coal severance tax – three-fourths vote required – bonding provisions.** (1) Because [section 3] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

**Section 8. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**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 date.** [This act] is effective July 1, 2021.

Approved May 12, 2021

## CHAPTER NO. 464

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriation of cultural and aesthetic grant funds – priority of disbursement.** (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract with a grantee must require the grantee to post the following statement on its website, promotional materials, and publications: “We are funded in part by coal severance taxes paid based upon coal mined in Montana and deposited in Montana’s cultural and aesthetic projects trust fund.” The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana Historical Society \$30,000 for the biennium ending June 30, 2023, for care and conservation of capitol complex artwork.

**Section 2. Appropriation of cultural and aesthetic grant funds.**

The following projects are approved, and \$314,800 is appropriated to the Montana arts council for the biennium ending June 30, 2023, from the cultural and aesthetic projects trust fund account:

Grant #	Grantee	Award Amount
Special Projects		
2213	Montana Historical Society	\$9,000
2214	Montana Preservation Alliance	\$7,000
2216	Museum of the Rockies	\$5,000
2219	Upper Swan Valley Historical Society, Inc.	\$4,000
2209	International Choral Festival	\$4,000
2215	Mountain Time Arts	\$4,000
2211	Missoula Writing Collaborative	\$4,000
2206	Friends of the Historical Museum at Fort Missoula	\$4,000
2207	Helena Symphony	\$3,000
2203	Council for the Arts, Lincoln	\$3,000
2217	Paris Gibson Square Museum of Art	\$3,000
2208	Historic Clark Chateau	\$3,000
2205	Eureka Community Players	\$3,000
2201	Billings Cultural Partners	\$3,000
2202	Bozeman Symphony Society	\$2,000
2204	Emerson Center for the Arts & Culture	\$2,000
2210	Montana Playwrights Network	\$2,000
2218	Queen City Ballet Company	\$2,000
2212	Montana Chamber Music Society	
	Operating Support	\$0
2246	Humanities Montana	\$10,000
2261	Montana Shakespeare in the Parks	\$10,000
2252	MAPS Media Institute	\$7,000
2223	Art Mobile of Montana	\$8,000
2263	Museums Association of Montana	\$8,000
2221	Alpine Artisans, Inc.	\$6,000
2222	Archie Bray Foundation	\$6,000
2245	Holter Museum of Art	\$6,000
2226	Billings Symphony Society	\$4,300
2271	Stillwater Historical Society	\$6,700
2276	Western Heritage Center	\$6,300
2254	MonDak Heritage Center	\$6,700
2253	MCT, Inc.	\$5,000
2251	Mai Wah Society Museum	\$5,000
2220	Alberta Bair Theater	\$4,300
2279	Yellowstone Art Museum	\$4,300
2238	Glacier County Historical Museum	\$5,400
2225	Billings Preservation Society	\$4,300
2228	Butte Citizens for Preservation and Revitalization	\$4,000
2274	Verge Theater	\$4,000
2270	Schoolhouse History & Art Center	\$4,700
2277	Whitefish Theatre Co	\$4,000
2260	Montana Repertory Theatre	\$5,000
2239	Glacier Symphony and Chorale	\$3,000
2237	Friends of Big Sky Education DBA Warren Miller	
	Performing Arts Center	\$3,000
2255	Montana Association of Symphony Orchestras	\$5,000
2233	Cohesion Dance Project	\$4,000

2280	Zootown Arts Community Center	\$4,000
2243	Helena Presents/Myrna Loy Center	\$3,000
2240	Grandstreet Broadwater Productions, Inc.	\$3,000
2272	Support Local Artists and Musicians (S.L.A.M.)	\$3,000
2275	WaterWorks Art Museum	\$3,700
2249	Lewistown Art Center	\$3,700
2256	Montana Ballet Company	\$3,000
2268	Ravalli County Museum	\$3,400
2224	Arts Missoula (Formerly Missoula Cultural Council)	\$2,000
2234	Conrad Mansion Museum	\$3,000
2250	MAGDA	\$5,000
2242	Hamilton Players, Inc	\$3,400
2266	Northwest Montana Historical Society	\$3,000
2244	Hockaday Museum of Art	\$2,000
2248	International Wildlife Film Festival	\$2,000
2231	Carbon County Arts Guild & Depot Gallery	\$3,700
2265	North Valley Music School	\$3,000
2229	Butte Symphony Association	\$3,000
2267	Pondera Arts Council	\$3,400
2235	Creative Arts Council	\$3,400
2247	Intermountain Opera Association	\$3,000
2259	Montana Performing Arts Consortium	\$3,000
2273	The Extreme History Project	\$2,000
2257	Montana Dance Arts Association	\$2,000
2232	Carbon County Historical Society	\$2,700
2236	Daly Mansion Preservation Trust	\$2,400
2264	National Museum of Forest Service History	\$0
2241	Great Falls Symphony	\$0
2278	World Museum of Mining	\$0
2269	Rocky Mountain Ballet Theatre	\$0
2230	C.M. Russell Museum	\$0
2258	Montana Flute Association	\$0
2262	Montana State Firefighters Memorial	\$5,000
2227	Bozeman Art Museum	
	Capital Expenditures	\$0
2281	Buses of Yellowstone Preservation Trust	\$4,000
2284	Missoula Art Museum	\$5,000
2282	Fort Peck Fine Arts Council, Inc.	\$5,000
2283	Gallatin Art Crossing	\$0

**Section 3. Reversion of grant money.** On July 1, 2023, the unencumbered balance of the grants for the biennium ending June 30, 2023, reverts to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

**Section 4. Changes to grants on pro rata basis.** Except for the appropriation provided for in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to those projects with funding greater than \$2,000 must be made on a pro rata basis.

**Section 5. Effective date.** [This act] is effective July 1, 2021.

Approved May 12, 2021

# CHAPTER NO. 465

[HB 10]

AN ACT REVISING LAWS RELATED TO INFORMATION TECHNOLOGY CAPITAL PROJECTS; APPROPRIATING MONEY FOR INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2023; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE LONG-RANGE INFORMATION TECHNOLOGY PROGRAM ACCOUNT; PROVIDING FOR THE DEVELOPMENT AND ACQUISITION OF NEW INFORMATION TECHNOLOGY SYSTEMS FOR THE DEPARTMENT OF ADMINISTRATION, THE DEPARTMENT OF LABOR AND INDUSTRY, AND THE DEPARTMENT OF TRANSPORTATION; PROMOTING STATEWIDE NETWORKS EFFICIENCIES; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Definitions.** For the purposes of [this act], the following definitions apply:

(1) "Chief information officer" has the meaning provided in 2-17-506.

(2) "Information technology" has the meaning provided in 2-17-506.

(3) "Information technology capital project" means a group of interrelated information technology activities that are planned and executed in a structured sequence to create a unique product or service.

(4) "LRITP" means the long-range information technology program account in the capital projects fund type.

**Section 2. Appropriations and authorizations.** (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for a project until the chief information officer and the budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration to be used only for the indicated information technology capital projects:

Agency/Project	LRITP	State Special Revenue	Federal Special Revenue	Proprietary Revenue	Total
DEPARTMENT OF ADMINISTRATION - GENERAL SERVICES					
DIVISION					
HVAC Systems Network and Monitoring					
		500,000		500,000	
DEPARTMENT OF ADMINISTRATION - STATE INFORMATION					
TECHNOLOGY SERVICES					
Montana Cybersecurity Enhancement Project (Restricted)					
		500,000			500,000

This appropriation may be used only for the cloud access security broker project.

**DEPARTMENT OF LABOR AND INDUSTRY**

Unemployment Insurance (UI) Tax Contributions System Version Upgrade

The department of labor and industry is authorized to transfer appropriations between federal and state special revenue funds for purposes of funding the unemployment insurance tax contributions system version upgrade.

5,000,000 5,000,000

Unemployment Insurance (UI) Benefits System Replacement

The department of labor and industry is authorized to transfer appropriations between federal and state special revenue funds for purposes of funding the unemployment insurance benefits system replacement.

45,000,000 45,000,000

**DEPARTMENT OF TRANSPORTATION**

Federal Billing System

2,500,000 2,500,000

**Section 3. Fund transfer.** The state treasurer shall transfer the amount of \$500,000 from the general fund to the LRITP by June 30, 2023.

**Section 4. Statewide networks efficiencies.** (1) The department of administration is directed to leverage federal funds and other resources to the maximum extent possible to assist with infrastructure obligations associated with federal and other programs.

(2) State agencies are authorized to utilize existing appropriation authority to support or enhance enterprise electronic content management services.

**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.** [This act] is effective July 1, 2021.

Approved May 12, 2021

## CHAPTER NO. 466

[HB 11]

AN ACT APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF COMMERCE FOR INFRASTRUCTURE PROJECTS, EMERGENCY GRANTS FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS, AND INFRASTRUCTURE PLANNING GRANTS; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS AND PROVIDING CLARIFICATIONS ON GRANTS AND FUNDS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER SYSTEM PROJECTS; AMENDING SECTION 90-6-710, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriation for treasure state endowment program grants.** (1) There is appropriated to the department of commerce \$9,869,800 for the biennium beginning July 1, 2021, from the treasure state endowment special revenue account established in 17-5-703(3)(a) to finance treasure state endowment program grants authorized by subsection (2).

(2) The following applicants and projects are authorized for grants and listed in the order of their priority:

Infrastructure Applicant (project type)	Grant Amount
1. Butte-Silver Bow, City-County of (water)	\$500,000
2. Thompson Falls, City of (wastewater)	\$750,000
3. Loma County Water and Sewer District (water)	\$455,800
4. Fort Smith Water and Sewer District (wastewater)	\$750,000
5. Hardin, City of (wastewater)	\$500,000
6. Lockwood Water and Sewer District (wastewater)	\$750,000
7. Phillips County—Buffalo Trail Water District (water)	\$200,000
8. Alberton, Town of (water)	\$750,000
9. Ekalaka, Town of (water)	\$500,000
10. Lewistown, City of (water)	\$500,000
11. Harlowton, City of (water)	\$625,000
12. Joliet, Town of (water)	\$625,000
13. Deer Lodge, City of (wastewater)	\$500,000
14. Libby, City of (wastewater)	\$464,000
15. Manhattan, Town of (wastewater)	\$750,000
16. Fairfield, Town of (water)	\$625,000
17. Darby, Town of (wastewater)	\$625,000
18. Seeley Lake Sewer District (wastewater)	\$750,000
19. Roundup, City of (water)	\$750,000
20. Red Lodge, City of (storm water)	\$500,000

(3) Funding for the projects numbered 1 through 17 in subsection (2) will be provided only as long as there are sufficient funds available from the amount that was deposited into the treasure state endowment special revenue account during the biennium beginning July 1, 2021. Funding for the projects will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)]. Projects numbered 18 through 20 listed in subsection (2) that have satisfied the conditions described in [section 3(1)] may receive grant funds if one or more of the projects numbered 1 through 17 terminate their right to any awarded funds in writing prior to the end of the biennium beginning July 1, 2021.

(4) There is appropriated to the department of commerce \$3,169,451 for the biennium beginning July 1, 2021, from the treasure state endowment special revenue account established in 17-5-703(3)(a) to finance treasure state endowment program grants authorized by subsection (5) as projects meet the conditions provided in [section 3(1)].

(5) The following applicants and projects are authorized for grants and listed in the order of their priority:

Bridge Applicant	Grant Amount
1. Custer County	\$378,615
2. Chouteau County	\$318,706
3. Park County	\$492,054
4. Powell County	\$365,900
5. Cascade County	\$750,000
6. Wibaux County	\$526,176
7. Madison County	\$338,000

(6) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsections (2) and (5) for purposes of encumbering the funds in the treasure state endowment special revenue account established in 17-5-703(3)(a) for the biennium beginning July 1, 2021, pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(7) Funding for the projects in subsections (2) and (5) will be provided only as long as there are sufficient funds available in the treasure state endowment special revenue account established in 17-5-703(3)(a) during the biennium beginning July 1, 2021. Funding for the projects will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)]. However, any of the projects listed in subsections (2) and (5) that have not completed the conditions described in [section 3(1)] by September 1, 2022, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(8) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsections (2) and (5) for the described purposes and in amounts not to exceed the amounts set out in subsections (2) and (5) except as provided in subsection (3). The grants authorized in this section are subject to the conditions set forth in [section 3(1)] and described in the treasure state endowment program 2023 biennium project funding recommendations to the 67th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsections (2) and (5). The department shall commit funds to projects listed in subsections (2) and (5), up to the amounts authorized except as provided in subsection (3), based on the manner of disbursement set forth in [section 3] until the funds deposited into the treasure state endowment special revenue account established in 17-5-703(3)(a) during the biennium beginning July 1, 2021, are expended.

(9) Grant recipients shall complete all of the conditions described in [section 3(1)] by September 30, 2024, or any obligation to the grant recipient will cease.

**Section 2. Approval of grants – completion of biennial appropriation.** (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(2) and 1(5)], the emergency infrastructure grants in [section 5], and the infrastructure planning grants in [section 6].

(2) The authorization of these grants completes a biennial appropriation from the treasure state endowment special revenue account established in 17-5-703(3)(a).

(3) Grants to entities from prior bienniums are reauthorized for completion of contract work.

**Section 3. Condition of grants – disbursement of funds.** (1) The disbursement of grant funds for the projects specified in [section 1(2) and 1(5)] is subject to completion of the following conditions:

(a) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(b) The grant recipient must have a project management plan that is approved by the department of commerce.

(c) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in 2 CFR 200.

(d) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2023 biennium project funding recommendations to the 67th legislature.

(e) The grant recipient shall satisfy other specific requirements considered necessary by the department of commerce to accomplish the purpose of the project as evidenced by the application to the department.

(f) The grant recipient shall execute a grant agreement with the department of commerce.

(2) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(3) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the most recent edition of the Treasure State Endowment Program Project Administration Manual adopted by the department through the administrative rulemaking process.

**Section 4. Other powers and duties of department.** (1) The department of commerce shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion:

(a) reduce the amount of grant funds to be provided to grant recipients in proportion to all other project funding sources; or

(b) reduce the amount of grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(3) If the grant recipient obtains a greater amount of grant funds than was contained in the treasure state endowment program application, the department may reduce the amount of the treasure state endowment program grant funds to be provided to ensure that the grant recipient continues to meet the threshold requirements contained in the program guidelines for receiving the larger treasure state endowment program grant.

**Section 5. Appropriation from treasure state endowment special revenue account for emergency grants.** There is appropriated \$100,000 from the treasure state endowment special revenue account to the department of commerce for the biennium beginning July 1, 2021, for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

**Section 6. Appropriation from treasure state endowment special revenue account for infrastructure planning grants.** There is appropriated \$900,000 from the treasure state endowment special revenue account to the department of commerce for the biennium beginning July 1, 2021, for the purpose of providing local governments, as defined in 90-6-701, with the infrastructure planning grants for infrastructure projects, as defined in 90-6-701.

**Section 7. Appropriation from treasure state endowment regional water system special revenue account.** (1) There is appropriated \$5,000,000 from the treasure state endowment regional water system special

revenue account to the department of natural resources and conservation for the biennium beginning July 1, 2021, to finance the state's share of regional water system projects authorized in subsection (2) and as set forth in 90-6-715.

(2) The state's four regional water authorities are authorized to receive the funds appropriated in subsection (1) as long as there are sufficient funds available from the amount that was deposited into the treasure state endowment regional water system special revenue account during the biennium beginning July 1, 2021.

(3) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 9(1)].

(4) This section constitutes a valid obligation of funds to the regional water authorities identified in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the biennium beginning July 1, 2021, under 17-7-302.

**Section 8. Approval of funds – completion of appropriation.**

(1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 7(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(3)(b).

**Section 9. Conditions – manner of disbursements of funds.** (1) The disbursement of funds under [sections 7 and 8] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

**Section 10.** Section 90-6-710, MCA, is amended to read:

**“90-6-710. Priorities for projects – procedure – rulemaking.** (1) The department of commerce must receive proposals for infrastructure projects from local governments on a continual basis. The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. For the projects under 90-6-703(1)(a), the department shall prepare and submit two lists containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection (2) and this subsection. One list must contain the ranked and recommended bridge projects, and the other list must contain the remaining ranked and recommended infrastructure projects referred to in 90-6-701(3)(a). Each list must be prioritized pursuant to subsection (2) of this section, but the department may recommend up to 20% of the interest earnings anticipated to be deposited into the treasure state endowment fund established in 17-5-703 during the following biennium for bridge projects. Before making recommendations to the governor, the department may adjust the ranking of projects by giving priority to urgent and serious public health or safety problems. The governor shall review the projects

recommended by the department and shall submit the lists of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to infrastructure projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(e) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(f) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; and

(g) projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the treasure state endowment program.

(5) The department shall report to each regular session of the legislature the status of all projects that have not been completed in order for the legislature to review each project's status and determine whether the authorized grant should be withdrawn.

(6) *A local government may begin construction of the proposed infrastructure project after submitting an application to the department and prior to legislative approval of a grant award, if the local government:*

*(a) has secured the firm commitment of all funding necessary to finance the proposed project;*

*(b) assumes all risk, liability, and financing for the proposed project; and*

*(c) acknowledges that any project expenses incurred prior to legislative approval of a grant award may be rendered ineligible by the department if the local government fails to meet any program requirements set forth in this part or the rules adopted by the department pursuant to subsection (4)."*

**Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 12. Effective date.** [This act] is effective July 1, 2021.

Approved May 12, 2021

## CHAPTER NO. 467

[HB 12]

AN ACT APPROPRIATING MONEY FROM THE HISTORIC PRESERVATION GRANT PROGRAM ACCOUNT TO THE DEPARTMENT OF COMMERCE FOR HISTORIC PRESERVATION PROJECTS; REQUIRING MATCHING

FUNDS FOR GRANTS; AUTHORIZING GRANTS FROM THE HISTORIC PRESERVATION GRANT PROGRAM ACCOUNT; PLACING CONDITIONS ON GRANTS AND FUNDS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriation for Montana historic preservation grant program.** (1) There is appropriated to the department of commerce \$5,490,121 for the biennium beginning July 1, 2021, from the historic preservation grant program account established in 22-3-1307 to finance projects authorized in subsection (2).

(2) The following projects and applicants are authorized for grants in their order of priority:

Rank	Project/Applicant	Grant Amount
1	Yucca Theater in Hysham	
	Treasure County '89ers Museum Board	\$23,300
2	The Dion Block in Glendive	
	McPherson Real Estate LLC on behalf of The Dion Block	\$206,822
2	Crowley Block in Lewistown	
	Bighorn Valley Health Center, Inc.	\$412,535
4	The People's Center in Pablo	
	Confederated Salish and Kootenai Tribes	\$50,600
4	Central School Building in Kalispell	
	Northwest Montana Historical Society	\$58,385
4	Boulder Hot Springs	
	Peace Valley Limited Partnership	\$498,500
7	10th Street Bridge in Great Falls	
	Preservation Cascade, Inc.	\$125,000
8	Ringling Mansion in White Sulphur Springs	
	Sarah C. Calhoun LLC on behalf of the Ringling Mansion	\$89,500
9	Livingston Depot Center	
	Livingston Depot Foundation, Inc.	\$140,000
9	Seeley Lake Historical Museum & Visitor's Center	
	Seeley Lake Historical Museum & Visitor's Center	\$15,000
9	The Heritage Museum in Libby	
	The Heritage Museum	\$229,690
12	Carpenters Union Hall in Butte	
	Carpenters Union Hall	\$228,600
12	O'Fallon Historical Museum in Baker	
	Fallon County	\$298,657
12	Paradise Center	
	Paradise Elementary School Preservation Committee	\$123,220
16	Blaine County Museum in Chinook	
	Blaine County Museum	\$60,240
16	Gardiner Community Center	
	Greater Gardiner Community Council	\$500,000
17	Dillon Public Library	
	Dillon Public Library	\$11,447
17	Troy Museum and Visitors' Center	
	Troy Museum and Visitors' Center	\$4,904
17	Old Town Hall in Shelby	
	City of Shelby	\$9,000

21	Mother Lode Theater in Butte City-County Butte-Silver Bow	\$450,000
21	East Barracks at Fort Owen Fort Owen State Park	\$81,561
24	Hotel Finlen in Butte Finlen Properties LLC	\$341,189
24	Museum of the Rockies in Bozeman Museum of the Rockies	\$500,000
26	Milwaukee Depot in Missoula Boone and Crockett Club	\$500,000
26	Missoula Art Museum Missoula Art Museum	\$419,000
29	Spotted Bear Ranger Station near Hungry Horse National Forest Foundation	\$72,200
29	Opera House Theater in Philipsburg Philipsburg Playhouse Productions	\$500,000
32	Conservation Legacy Center in Missoula National Museum of Forest Service History	\$500,000
34	Billings Depot Billings Depot	\$469,500
34	Yellowstone Historic Center in West Yellowstone Yellowstone Historic Center	\$400,000
36	Roosevelt School Building in Red Lodge Red Lodge Area Community Foundation	\$457,578
36	Norton House in Columbus The Stillwater Historical Society	\$373,178
38	East Helena Volunteer Fireman's Hall City of East Helena	\$200,000
39	Conrad Mansion Museum in Kalispell Conrad Mansion Directors, Inc. on behalf of the Conrad Mansion Museum	\$28,800
39	Deer Lodge Visitor Center and Discover Deer Lodge Office Deer Lodge Development Group, Inc. dba Discover Deer Lodge	\$50,000
39	Wheeler Property in Glacier National Park Glacier National Park Conservancy	\$493,200
39	The O'Rourke Building in Butte The O'Rourke Building, LLC	\$457,254
43	Civic Center in Great Falls City of Great Falls	\$500,000
43	Riverside Park in Laurel City of Laurel	\$345,600
46	Black Bear Inn in Thompson Falls Black Bear Inn, Inc.	\$57,000
47	Placer School in Winston Montana Business Assistance Connection on behalf of the Placer School	\$59,650
49	Historic Red Brick Building in Hardin City of Hardin on behalf of Dan's Custom Design	\$33,390
49	Rocky Mountain Building in Great Falls Community Health Care Center, Inc. dba Alluvion Health	\$500,00

49	Alberton Railroad Depot Town of Alberton	\$32,134
52	Hammond Arcade Building in Missoula Caras Real Estate LLC	\$496,492
52	Ashby Cabin in Lincoln Upper Blackfoot Valley Historical Society	\$24,920
52	St Patrick's Mission in Butte World Museum of Mining	\$34,740
55	Kinney Building in Wibaux 3D4B Properties, Inc. on behalf of the Kinney Building	\$76,687
56	Fromberg Opera House American Legion Post 71 of Fromberg, MT	\$74,679
56	City Hall in Deer Lodge City of Deer Lodge	\$216,800
56	Old Fort Benton River & Plains Society's Fort Benton Reconstruction Committee	\$232,279
59	City Hall in Dillon City of Dillon	\$500,000
62	Miles City Elks Lodge #537 Miles City Elks Lodge #537	\$500,000
62	W.A. Clark Prison Theater in Deer Lodge Powell County Museum and Arts Foundation	\$174,400
64	Huntley Project Museum Huntley Project Museum	\$41,805
64	Sacred Heart Church in Harlem Sacred Heart Pink Church, Highway 2	\$125,560
66	Rundle Building in Glasgow Rundle Restoration Project LLC	\$489,600
67	Big Timber Civic Center Big Timber Civic Center	\$476,440
67	Bell Street Bridge in Glendive Dawson County Bell Street Bridge Committee	\$53,000
69	Emerson Center's Crawford Theater in Bozeman Emerson Center for the Arts & Culture	\$200,000
69	Gallatin History Museum in Bozeman Gallatin History Museum	\$19,350
69	Grandey School Building in Terry Prairie County School District K-12 #5	\$176,000
72	Hotel Libby Friends of Historic Hotel Libby	\$179,250
72	Stevensville United Methodist Church Stevensville United Methodist Church	\$98,500
72	Yellowstone County Museum in Billings Yellowstone County	\$269,301
75	Malta Carnegie Library Rachel Liff on behalf of the Malta Carnegie Library	\$80,000
75	Arts & Crafts Building in Lame Deer The Northern Cheyenne Tribe	\$493,300
75	The Original Daly Mansion in Hamilton The Original Marcus Daly Home and Bitterroot Stock Farm Office Trust	\$341,730

75	Marias Museum of History & Art in Shelby Toole County -- Marias Museum of History & Art	\$21,000
79	St Paul's Episcopal Church in Fort Benton Fort Benton Community Improvement Association	\$128,024
79	Mineral Museum in Butte Montana Bureau of Mines and Geology Mineral Museum	\$125,400
81	The Stevensville Historical Museum The Stevensville Historical Museum, Inc.	\$30,100
82	Pioneer Building in Cut Bank Glacier County Historical Museum	\$183,315
82	Victor Heritage Museum Victor Heritage Museum	\$4,060
84	Kendall Townsite in Lewistown Montana Council, Boy Scouts of America	\$500,000
85	Children's Museum of Montana in Great Falls Children's Museum of Montana, Inc. dba Museum of Montana	\$500,000
86	Reese Creek School near Belgrade Reese Creek Community Center, Inc.	\$392,432
87	Havre Beneath the Streets Havre Beneath the Streets	\$164,000
89	Old Auditorium in Geraldine Geraldine K-12 Schools	\$50,088
90	Wolf Point Area Museum Wolf Point Area Museum	\$50,088
91	Farmer's Daughter General Store in Hardin City of Hardin on behalf of Farmer's Daughter General Store	\$75,000
92	High Plains Women's Museum in Billings High Plains Women's Museum	\$5,800
93	Big Horn County Historical Museum in Hardin Big Horn County Historical Society (applicant withdrew application 3/12/20)	\$500,000
94	Hotel Deer Lodge Deer Lodge Preservation, Inc. (application submitted untimely 6/12/2020)	\$2,000,000

(3) Funding for the projects in subsection (2) will be provided in the order of priority as long as there are sufficient funds available from the amount that was deposited into the historic preservation grant program account during the biennium beginning July 1, 2021. The funds in this subsection must be awarded for the projects and in amounts not to exceed the amounts set out in subsection (2) subject to the conditions set forth in [section 3]. However, any of the projects listed in subsection (2) that have not completed the conditions described in [section 3(1)] by September 1, 2022, must be reviewed by the next regular legislature to determine if the authorized grant should be withdrawn. Projects requested by a local government must provide a 20% match of the total estimated project costs. Projects requested by other entities must provide a 20% match of the recommended grant amount.

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant projects listed in subsection (2) for purposes of encumbering the funds in the historic preservation grant program account established in 22-3-1307 for the biennium beginning July 1, 2021, pursuant to 17-7-302. A grant recipient's entitlement to receive funds is dependent on the

grant recipient's compliance with the conditions described in [section 3] and on the availability of funds.

(5) The legislature, pursuant to 22-3-1305, authorizes the grants for the projects listed in subsection (2).

(6) Grant recipients must complete all of the conditions described in [section 3(1)] by September 30, 2024, or any obligation to the grant recipient will cease.

**Section 2. Approval of grants – completion of biennial appropriation.** (1) The legislature, pursuant to 22-3-1305, authorizes grants for the projects identified in [section 1(2)].

(2) The authorization of these grants completes a biennial appropriation from the historic preservation grant program account established in 22-3-1307.

**Section 3. Condition of grants – disbursement of funds.** (1) The disbursement of grant funds for the projects specified in [section 1(2)] is subject to completion of the following conditions:

(a) The grant recipient shall document that other matching funds required for the completion of the project are firmly committed.

(b) The grant recipient must have a project management plan that is approved by the department of commerce.

(c) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in 2 CFR 200.

(d) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the Montana historic preservation grant program 2023 biennium report to the 67th legislature.

(e) The grant recipient shall satisfy other specific requirements considered necessary by the department of commerce to accomplish the purpose of the project as evidenced by the application to the department.

(f) The grant recipient shall execute a grant agreement with the department of commerce.

(2) Recipients of Montana historic preservation grant program funds are subject to the requirements of the department of commerce as described in the most recent edition of the Montana historic preservation grant program project administration manual adopted by the department through the administrative rulemaking process.

**Section 4. Other powers and duties of the department of commerce.** (1) The department of commerce must disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion reduce the amount of grant funds provided to grant recipients in proportion to all other project funding sources.

**Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 6. Effective date.** [This act] is effective July 1, 2021.

Approved May 12, 2021

**CHAPTER NO. 468**

[HB 14]

AN ACT PROVIDING FUNDING AND AUTHORIZATION FOR CAPITAL AND INFRASTRUCTURE PROJECTS STATEWIDE; APPROPRIATING MONEY TO THE DEPARTMENT OF ADMINISTRATION FOR CAPITAL PROJECTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM AND THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; AUTHORIZING PROJECT GRANT AMOUNTS; PLACING CONDITIONS UPON GRANTS AND FUNDS; PROVIDING FOR TRANSFERS OF FUNDS; PROVIDING APPROPRIATIONS FOR OPERATIONS AND MAINTENANCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Authorizations of and appropriations for capital projects.** (1) Upon passage and approval of [this act], the following projects, pursuant to 18-2-102, are authorized and approved and funds are appropriated to the department of administration from the indicated funding sources. The department of administration is authorized to transfer funding and authority between fund types. Funds not requiring legislative appropriation are included for the purposes of authorization only:

Agency/Project	LRBP CD Fund	Authority Only	Total
<b>DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES</b>			
SWMVH Enclosed Walkways			
	3,300,000		3,300,000
<b>DEPARTMENT OF LIVESTOCK</b>			
MT Veterinarian Diagnostic & Ag Analytical Labs			
	9,850,000	26,200,000	36,050,000
<b>DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION</b>			
Eastern Land Office Facilities & Shop			
	2,250,000		2,250,000
<b>DEPARTMENT OF REVENUE</b>			
Liquor Warehouse Expansion			
		6,500,000	6,500,000
<b>MONTANA UNIVERSITY SYSTEM</b>			
UM Forestry Conservation & Science Lab			
	25,000,000	20,000,000	45,000,000
MAES Research and Wool Laboratories			
	11,000,000	1,300,000	12,300,000
UM-W Block Hall Renovation			
	7,200,000	4,800,000	12,000,000

(2) Except as provided in subsection (3), "Authority Only" consists of federal funds received pursuant to the American Rescue Plan Act of 2021, Public Law 117-2.

(3) "Authority Only" for the UM Forestry Conservation & Science Lab and the MAES Research and Wool Laboratories means approval provided by the legislature to expend money that does not require an appropriation or money that accrues to an agency under the provisions of law, including grants,

donations, auxiliary funds, proprietary funds, nonstate funds, and university funds.

(4) (a) If an immediate or future increase in state funding for program expansion or operations and maintenance is required for a new facility in [section 1] but the increase is not appropriated by the 67th legislature, such new facility in [section 1] is not appropriated or authorized as provided in 17-7-210.

(b) Pursuant to 17-7-210, if construction of a new facility requires an immediate or future increase in state funding for program expansion or operations and maintenance, the legislature may not authorize the new facility unless it also appropriates funds for the increase in state funding for program expansion and operations and maintenance. To the extent allowed by law, at the end of each fiscal year following approval of a new facility but prior to receipt of its certificate of occupancy, the appropriation made pursuant to subsection (4)(c) reverts to its originating fund. The appropriation is not subject to the provisions of 17-7-304.

(c) The following money is appropriated for the biennium beginning July 1, 2021, to the indicated agency from the indicated sources for program expansion or operations and maintenance for the indicated new facility:

DEPARTMENT OF LIVESTOCK

MT Veterinarian Diagnostic and Ag Analytical Labs	\$427,100 from the general fund, \$738,588 from state special revenue funds, and \$274,027 from proprietary funds
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DEPARTMENT OF AGRICULTURE

MT Veterinarian Diagnostic and Ag Analytical Labs	\$172,030 from the general fund and \$24,894 from state special revenue funds
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MONTANA UNIVERSITY SYSTEM

UM Forestry Conservation & Science Lab	\$798,659 from the general fund
MAES Research and Wool Laboratories	\$389,402 from the general fund

(d) It is the legislature's intent that these appropriations become part of the respective agency's base budget for the biennium beginning July 1, 2021.

(e) Appropriations in subsection (4)(c) are contingent on the passage and approval of a bill that includes an appropriation for the construction of the indicated projects in subsection (4)(c).

**Section 2. Planning and design.** The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interentity loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of funding from another funding source.

**Section 3. Capital projects -- contingent funds -- legislative consent.** If a capital project is financed in whole or in part with appropriations contingent on the receipt of funding from an authority-only funding source, the department of administration may not let the project go to bid until the agency receiving funding has submitted a financial plan and agreement for approval by the director of administration.

(2) A financial plan and agreement may not be approved by the director if:

(a) the level of funding and authorization provided under the financial plan deviates substantially from the funding level provided in [section 1] for that project; or

(b) the scope of the project is substantially altered or revised from the concept and intent for that project as presented to the 67th legislature.

(3) The appropriations authorized in [section 1] constitute legislative consent for the capital projects contained in [section 1] within the meaning of 18-2-102.

**Section 4. Review by department of environmental quality.** The department of environmental quality shall review capital projects authorized in [section 1] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy or utility savings and improvements, the project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, with the amount dependent on the annual utility savings resulting from the capital project. Agencies must be notified of potential funding after the review and are obligated to utilize the energy conservation program funding, if available.

**Section 5. Appropriation for treasure state endowment program grants.** (1) There is appropriated to the department of commerce \$13,707,898 for the biennium beginning July 1, 2021, from the local infrastructure account provided for in section 2(2), Chapter 476, Laws of 2019, to finance treasure state endowment program grants authorized by subsection (2).

(2) The following applicants and projects are authorized for grants:

Infrastructure Applicant (project type)	Grant Amount
18. Seeley Lake Sewer District (wastewater)	\$750,000
19. Roundup, City of (water)	\$750,000
20. Red Lodge, City of (storm water)	\$500,000
21. Choteau, City of (water)	\$625,000
22. Richey, Town of (water)	\$500,000
23. Wolf Point, City of (wastewater)	\$625,000
24. Circle, Town of (water)	\$625,000
25. Hill County RSID #21 (wastewater)	\$260,500
26. Shelby, City of (water)	\$625,000
27. Cooke City Sewer District (wastewater)	\$500,000
28. Big Sandy, Town of (storm water)	\$484,671
29. East Helena, City of (wastewater)	\$625,000
30. Winnett, Town of (wastewater)	\$625,000
30. St. Marie - North Valley County Water and Sewer District (water)	\$625,000
32. Big Timber, City of (water)	\$625,000
33. Big Mountain County Sewer District (wastewater)	\$500,000
34. Three Forks, City of (water)	\$625,000
34. Flaxville, Town of (water)	\$625,000
36. Philipsburg, Town of (wastewater)	\$750,000
37. Sun Prairie County Water District (water)	\$275,000
38. Fort Benton, City of (water)	\$625,000
39. Valier, Town of (wastewater)	\$625,000
40. Livingston, City of (wastewater)	\$312,727
41. Sunburst, Town of (water)	\$625,000

(3) Funding for the projects numbered 18 through 41 in subsection (2) will be provided up to the amount of the appropriation in subsection (1) as projects meet the conditions provided in [section 7(1)].

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (2) for purposes

of encumbering the funds for the biennium beginning July 1, 2021, pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 7(1)] and on the availability of funds.

(5) Funding for projects in subsection (2) will be provided only as long as there are sufficient funds available during the biennium beginning July 1, 2021. Funding for these projects will be made available in the order that the grant recipients satisfy the conditions described in [section 7(1)]. However, any of the projects listed in subsection (2) that have not completed the conditions described in [section 7(1)] by September 1, 2022, must be reviewed by the next regular legislature to determine if the authorized grant should be withdrawn.

(6) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (2) for the described purposes and in amounts not to exceed the amounts set out in subsection (2) except as provided in subsection (3). The grants authorized in this section are subject to the conditions set forth in [section 7(1)] and described in the treasure state endowment program 2023 biennium project funding recommendations to the 67th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (2). The department shall commit funds to projects listed in subsection (2), up to the amounts authorized except as provided in subsection (3), based on the manner of disbursement set forth in [section 7] until the funds are expended.

(7) Grant recipients shall complete all of the conditions described in [section 7(1)] by September 30, 2024, or any obligation to the grant recipient will cease.

(8) Projects numbered 18 through 20 may not receive funds from both House Bill No. 11 and this section. If House Bill No. 11 and [this act] are passed and approved and [this act] provides funding for projects numbered 18 through 20, those receiving funding from [this act] may not receive funding from House Bill No. 11.

**Section 6. Approval of grants -- completion of biennial appropriation.** (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 5(2)].

(2) The authorization of these grants completes a biennial appropriation.

**Section 7. Condition of grants -- disbursements of funds.** (1) The disbursement of grant funds for the projects specified in [section 5(2)] is subject to completion of the following conditions:

(a) The grant shall document that other matching funds required for completion of the project are firmly committed.

(b) The grant recipient must have a project management plan that is approved by the department of commerce.

(c) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in 2 CFR 200.

(d) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2023 biennium project funding recommendations to the 67th legislature.

(e) The grant recipient shall satisfy other specific requirements considered necessary by the department of commerce to accomplish the purpose of the project as evidenced by the application to the department.

(f) The grant recipient shall execute a grant agreement with the department of commerce.

(2) All projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(3) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the most recent edition of the Treasure State Endowment Program Project Administration Manual adopted by the department through the administrative rulemaking process.

**Section 8. Other powers and duties of department of commerce.**

(1) The department of commerce shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion:

(a) reduce the amount of grant funds to be provided to grant recipients in proportion to all other project funding sources; or

(b) reduce the amount of grant funds to be provided so that the grant recipient’s projected average residential user rates do not become lower than their target rate as determined by the department.

(3) If the grant recipient obtains a greater amount of grant funds than was contained in the treasure state endowment program application, the department may reduce the amount of the treasure state endowment program grant funds to be provided to ensure that the grant recipient continues to meet the threshold requirements contained in the program guidelines for receiving the larger treasure state endowment program grant.

**Section 9. Appropriation for renewable resource grants.** (1) There is appropriated from the local infrastructure account provided for in section 2(2), Chapter 476, Laws of 2019, to the department of natural resources and conservation up to \$4,720,788 for grants to political subdivisions and local governments in the biennium beginning July 1, 2021. The funds referred to in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts listed in subsection (3), subject to the conditions set forth in [sections 11 and 12] and the contingencies described in the renewable resource grant and loan program January 2021 report to the 67th legislature titled: Governor’s Executive Budget Fiscal Years 2021-2023 Volume 6.

(2) Funds must be awarded up to the amounts approved in subsection (3) as conditions set forth in [section 12] are satisfied and until available funds are expended. If at any time a grant sponsor determines that a project will not begin before June 30, 2023, the sponsor shall notify the department of natural resources and conservation. After all eligible projects are funded, remaining funds may be used for any renewable resource project authorized under this section.

(3) The following are the prioritized grant projects:

Applicant	Amount
37 Beaverhead County Conservation District (Beaverhead County CD Irrigation Efficiency and Water Measurement Project)	\$125,000

38	Stillwater Conservation District (Stillwater CD Mendenhall Ditch Intake and Drop Structure Rehabilitation Project)	\$125,000
39	Department of Natural Resources and Conservation-Water Resources Division (MT DNRC Deadman's Supply Canal Rehabilitation Project)	\$125,000
40	Lower Yellowstone Irrigation Project (LYIP Lateral V Check Structure & Lateral W Headgate Rehabilitation Project)	\$125,000
41	Department of Natural Resources and Conservation- Water Resources Division (MT DNRC Two Dot Canal Rehabilitation Project)	\$125,000
42	Circle, Town of (Circle Water Improvements, Phase 3)	\$125,000
43	Roundup, City of (Roundup Water Main Improvements, Phase 6)	\$125,000
44	Clinton Irrigation District (CID Schoolhouse Lateral Pipeline Conversion Project)	\$125,000
45	Ten Mile/Pleasant Valley Sewer District (Ten Mile Creek Estates/Pleasant Valley WSD Wastewater Improvement Project)	\$125,000
46	Carbon County Conservation District (Carbon County CD Mutual Ditch Siphon Replacement)	\$125,000
47	Ekalaka, Town of (Ekalaka Water System Improvement Project)	\$125,000
48	Glen Lake Irrigation District (GLID Rolling Hills Canal Rehabilitation)	\$125,000
49	Buffalo Rapids Irrigation Project District 1 (BRID 1 Irrigation System Automation Project)	\$125,000
50	Flaxville, Town of (Flaxville Water Improvement Project)	\$125,000
51	North Valley County Water and Sewer District (North Valley County WSD Water Improvements, Phase 1)	\$125,000
52	Buffalo Rapids Irrigation Project District 2 (BRID 2 Lateral 1.6 Pipeline Conversion Project, Phase 2)	\$125,000
53	Petroleum County Conservation District (Petroleum County CD Petrolia Dam Outlet Works Headgate Replacement)	\$105,742
54	Harlowton, City of (Harlowton Water System Improvements, Phase 4)	\$125,000
55	Alfalfa Valley Irrigation District (AVID East Flynn Canal Rehabilitation, Phase 2)	\$125,000
56	Malta Irrigation District (MID Main Canal Lining Wagner Reach)	\$125,000
57	Glasgow Irrigation District (GID Spaniard Check Structure)	\$125,000
58	Lewistown, City Of (Lewistown Water System Improvements)	\$125,000
59	Glen Lake Irrigation District (GLID Infrastructure Modernization Study)	\$125,000
60	Big Timber, City of (Big Timber Water System Improvements)	\$125,000
61	Alberton, Town of (Alberton Water Improvements Project)	\$125,000

62	Hysham Irrigation District (HID Intake Improvements Project)	\$125,000
63	Three Forks, City of (Three Forks Water System Improvements)	\$125,000
64	Choteau, City of (Choteau Water System Improvements)	\$125,000
65	Fairfield, Town of (Fairfield Water System Improvements)	\$125,000
66	Huntley Project Irrigation District (HPID Yellowstone River Bank Stabilization Project)	\$125,000
67	Sweet Grass County Conservation District (Sweet Grass County CD Post-Kellogg Ditch Headworks Improvement Project)	\$125,000
68	Lewistown, City Of (Lewistown Ditch Rehabilitation Project)	\$125,000
69	Joliet, Town of (Joliet Water System Improvements)	\$125,000
70	Richey, Town of (Richey Water System Improvements, Phase 1)	\$125,000
71	Fort Benton, City of (Fort Benton Water System Improvements)	\$125,000
72	Big Sandy, Town of (Big Sandy Stormwater Improvements)	\$125,000
73	Belgrade School District (Belgrade School District- Ridge View Elementary Solar Project)	\$115,046
74	Paradise Valley Irrigation District (PVID Milk River Bank Stabilization Project)	\$125,000

**Section 10. Appropriations for reclamation and development grants.** (1) The amount of \$2,099,322 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account provided for in 15-38-302 for grants to political subdivisions and local governments during the biennium ending June 30, 2023. The funds in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts set out in subsection (3) subject to the conditions set forth in [sections 11 and 12] and the contingencies described in the reclamation and development grant program report to the 67th legislature titled: Governor's Executive Budget Fiscal Years 2021 - 2023 Volume 5.

(2) Funds must be awarded up to the amounts approved in this section as conditions set forth in [section 12] are satisfied and until available funds are expended. After all eligible projects are funded, remaining funds may be used for any reclamation and development project authorized under this section.

(3) The following are the prioritized grant projects: Reclamation and Development Grants Program:

	Applicant (Project)	Amount
10	Lewistown, City of (Central Post and Treating Company CECRA Facility: Phase II, Capping and Site Reclamation)	\$500,000
11	Sunburst, Town of (Town of Sunburst Suta South Clean Up Project)	\$185,805
12	City and County of Butte-Silver Bow (Butte Mining District: Reclamation and Protection Project - Phase V)	\$224,680

13	Ruby Valley Conservation District (Granite Creek Reclamation Realignment Project)	\$461,500
14	Deer Lodge Valley Conservation District (Upper French Gulch Fish Passage and Restoration Project)	\$194,832
15	Fort Peck Assiniboine and Sioux Tribes (Orphaned Oilwell Abandonment and Reclamation)	\$300,000
16	Ryegate, Town of (Former Ryegate Conoco Groundwater Remediation)	\$232,505

**Section 11. Coordination of fund sources for grants to political subdivisions and local governments.** A project sponsor listed under [section 12] may not receive funds from both the reclamation and development grants program and the renewable resource grant and loan program for the same project during the same biennium.

**Section 12. Condition of grants.** Disbursement of funds under [sections 9 and 10] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Any changes in scope of work or budget subsequent to legislative approval may not change project goals and objectives. Changes in activities that would reduce the public or natural resource benefits as presented in department of natural resources and conservation reports and applicant testimony to the 67th legislature may result in a proportional reduction in the grant amount.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the program report to the legislature for the biennium ending June 30, 2023, or, in the case of planning grants issued under [sections 9 and 10], completion of conditions specified at the time of written notification of approved grant authority.

(3) The project sponsor must have a fully executed grant agreement with the department.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal as presented to the legislature.

**Section 13. Approval of grants -- completion of biennial appropriation.** The legislature, pursuant to 90-2-1111, approves the reclamation and development grants listed in [section 10]. The legislature, pursuant to 85-1-605, approves the renewable resource program grants listed in [section 9]. The authorization of these grants completes a biennial appropriation from the local infrastructure account provided for in section 2(2), Chapter 476, Laws of 2019.

**Section 14. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 15. Transfer of funds.** (1) The state treasurer shall transfer \$58,600,000 from the general fund to the capital developments long-range building program account provided for in 17-7-209 by July 1, 2021.

(2) The state treasurer shall transfer \$2,099,322 from the general fund to the natural resources projects state special revenue account provided for in 15-38-302 by August 15, 2021.

**Section 16. Effective date.** [This act] is effective on passage and approval.

Approved May 12, 2021

## CHAPTER NO. 469

[HB 20]

AN ACT PERMITTING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE GRANTS FOR COURTESY CARS AT MUNICIPAL AND STATE-OWNED AIRPORTS TO APPROPRIATE THIRD PARTIES; AMENDING SECTIONS 67-10-901, 67-10-902, 67-10-903, AND 67-10-904, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 67-10-901, MCA, is amended to read:

**“67-10-901. Purpose.** (1) The purpose of this part is to provide grants to municipalities *and third parties* for courtesy cars at certain Montana airports where rental cars or taxicabs are not available *for service at all times*.

(2) The purpose of the program is to provide the airport users with ground transportation for short-term use between the airport and the local trading or recreation area.”

**Section 2.** Section 67-10-902, MCA, is amended to read:

**“67-10-902. Definitions.** As used in this part, the following definitions apply:

(1) “Airport” means an airport, as defined in 67-1-101, that does not have commercial automobile rental services available. The term includes a regional airport authority or municipal airport authority as defined in 67-1-101.

(2) “Courtesy car” means a motor vehicle provided by, and titled in the name of, a municipality *or third party* for the purposes of and pursuant to the conditions set out in this part.

(3) (a) “User” means an airplane pilot *or an airplane passenger* ~~or an airplane passenger~~ who flies into an airport.

(b) The term does not include local residents or airport personnel.”

**Section 3.** Section 67-10-903, MCA, is amended to read:

**“67-10-903. Use of courtesy cars at airports – department responsibilities.** (1) Upon the request of a municipality *or third party*, the department may provide grant money from the department’s special revenue account for courtesy cars for use at qualified airports, as provided in this part.

(2) A courtesy car grant may not be ~~given to a municipality~~ *awarded* if commercial rental cars or taxicabs ~~are available~~ that provide service to local airports *are available for service at all times*.

(3) *The department shall provide preference for the purchase of vehicles that are accessible to persons with disabilities when awarding grants from the courtesy car program.*

~~(3)~~(4) The department may adopt necessary rules, pursuant to its authority in 67-2-102, to provide courtesy car grants, including rules regarding the receipt and review of grant applications.”

**Section 4.** Section 67-10-904, MCA, is amended to read:

**“67-10-904. Responsibilities and obligations of municipality and third party.** (1) A municipality may apply to the department for a grant to provide courtesy car services at a qualified airport. The municipality may procure a ~~sponsor~~ *third party* and assign the ~~sponsor~~ *third party* to a qualified airport to manage the ~~municipality’s~~ *municipality’s* courtesy car program. A ~~sponsor~~ *third party* may be a fixed base operator, an airport manager, *a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3)*, or other responsible party. The municipality shall ensure that the ~~local~~ ~~sponsor~~ *third party* is familiar with and complies with all conditions of the courtesy car program.

(2) A municipality or *third party* may not provide a courtesy car for use by local residents or airport personnel *except to facilitate incidental maintenance of the courtesy car.*

(3) A courtesy car may be used only between the *awarded* airport and the local trading or recreation area. Travel in a courtesy car across the state line or beyond the local trading or recreation area is prohibited.

(4) *A courtesy car must be kept at the awarded airport when not in use and must be available for users who fly into the airport.*

~~(4)~~(5) (a) The **municipality** recipient of the courtesy car grant shall procure liability insurance to protect itself and the department from risk of loss. Liability insurance limits must be a minimum of \$750,000 for each claim and \$1.5 million for each occurrence, as provided in 2-9-108. The department must be named as an additional insured.

(b) Claims and actions against the **sponsor** courtesy car owner are subject to and are governed by Title 2, chapter 9, part 3.

~~(5)~~(6) A courtesy car may not be used unless the municipality or the **sponsor** *third party* has obtained certification that the user has personal motor vehicle liability insurance coverage as required in 61-6-301.

(7) *For airports owned, maintained, or operated by the state, the department may distribute grant money to a third party to purchase a courtesy car for use to and from the state airport as long as the department ensures the third party is familiar with and complies with all conditions of the courtesy car program.*

(8) *In accordance with federal and state nondiscrimination laws and requirements, all vehicles purchased with grant funds from the courtesy car program or vehicles donated to the courtesy car program must be accessible to persons with disabilities or the grantee must provide a vehicle accessible to persons with disabilities upon request.”*

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

Approved May 12, 2021

## CHAPTER NO. 470

[HB 46]

AN ACT GENERALLY REVISING SPECIAL EDUCATION FUNDING LAWS; INCLUDING THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT IN THE DEFINITION OF “BASE AID”; ESTABLISHING A METHOD FOR CALCULATING THE TOTAL SPECIAL EDUCATION ALLOCATION; APPLYING THE INFLATION FACTOR CALCULATED UNDER 20-9-326 TO THE TOTAL SPECIAL EDUCATION ALLOCATION FOR DETERMINING THE PRESENT LAW BASE CALCULATED UNDER TITLE 17, CHAPTER 7, PART 1, MCA; AMENDING SECTIONS 20-9-306 AND 20-9-326, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 20-9-306, MCA, is amended to read:

“**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “BASE” means base amount for school equity.

(2) “BASE aid” means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment;

(f) the total American Indian achievement gap payment; ~~and~~

(g) the total data-for-achievement payment; *and*

(h) *the special education allowable cost payment.*

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, 100% of the total data-for-achievement payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) \$315,481 for fiscal year 2020 and \$321,254 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) \$315,481 for fiscal year 2020 and \$321,254 for each succeeding fiscal year for school districts with an ANB of more than 800, plus \$15,774 for fiscal year 2020 and \$16,063 for each succeeding fiscal year for each additional 80 ANB over 800;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) \$52,579 for fiscal year 2020 and \$53,541 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) \$52,579 for fiscal year 2020 and \$53,541 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus \$2,630 for fiscal year 2020 and \$2,678 for each succeeding fiscal year for each additional 25 ANB over 250;

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for the district's kindergarten through grade 6 elementary program:

(A) \$52,579 for fiscal year 2020 and \$53,541 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) \$52,579 for fiscal year 2020 and \$53,541 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of

more than 250, plus \$2,630 for fiscal year 2020 and \$2,678 for each succeeding fiscal year for each additional 25 ANB over 250; and

(ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle school:

(A) \$105,160 for fiscal year 2020 and \$107,084 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and

(B) \$105,160 for fiscal year 2020 and \$107,084 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus \$5,258 for fiscal year 2020 and \$5,354 for each succeeding fiscal year for each additional 45 ANB over 450.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, the total data-for-achievement payment, and the greater of the district's special education allowable cost payment multiplied by:

(a) 175%; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying \$216 for fiscal year 2020 and \$220 for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying \$21.03 for fiscal year 2020 and \$21.41 for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.

(14) "Total Indian education for all payment" means the payment resulting from multiplying \$21.96 for fiscal year 2020 and \$22.36 for each succeeding fiscal year times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

(15) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of \$7,201 for fiscal year 2020 and \$7,333 for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of \$5,624 for fiscal year 2020 and \$5,727 for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of \$5,624 for fiscal year 2020 and \$5,727 for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of \$7,201 for fiscal year 2020 and \$7,333 for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(16) "Total quality educator payment" means the payment resulting from multiplying \$3,275 for fiscal year 2020 and \$3,335 for each succeeding fiscal year by the number of full-time equivalent educators as provided in 20-9-327.

(17) "*Total special education allocation*" means the state payment distributed pursuant to 20-9-321 that is the greater of the amount resulting from multiplying \$287.93 for fiscal year 2022 and \$286.02 for each succeeding fiscal year by the statewide current year ANB or the amount of the previous year's total special education allocation."

**Section 2.** Section 20-9-326, MCA, is amended to read:

**"20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements.** (1) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall determine the inflation factor for the basic and per-ANB entitlements, the data-for-achievement payment, *the per-ANB amount used to calculate the total special education allocation in 20-9-306*, and the general fund payments in 20-9-327 through 20-9-330 in each fiscal year of the ensuing biennium. The inflation factor is calculated as follows:

(a) for the first year of the biennium, divide the consumer price index for July 1 of the prior calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the prior calendar year and raise the resulting ratio to the power of one-third; and

(b) for the second year of the biennium, divide the consumer price index for July 1 of the current calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the current calendar year and raise the resulting ratio to the power of one-third.

(2) The present law base for the entitlements referenced in subsection (1), calculated under Title 17, chapter 7, part 1, must consist of any enrollment increases or decreases plus the inflation factor calculated pursuant to this section, not to exceed 3% in each year, applied to both years of the biennium.

(3) For the purposes of this section, "consumer price index" means the consumer price index, U.S. city average, all urban consumers, for all items, using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor."

**Section 3. Effective date.** [This act] is effective July 1, 2021.

**Section 4. Applicability.** [This act] applies to school fiscal years beginning on or after July 1, 2021.

Approved May 12, 2021

## CHAPTER NO. 471

[HB 63]

AN ACT GENERALLY REVISING INSURANCE REGULATORY LAWS; UPDATING REFERENCES TO FEDERAL REGULATIONS AND QUARTERLY LISTINGS OF ALIEN INSURERS; REQUIRING LIFE INSURERS TO ANNUALLY PROVIDE AN OPINION RELATING TO RESERVES; AMENDING SECTIONS 15-31-552, 33-2-307, 33-2-407, 33-20-505, 33-22-211, 33-22-1313, 33-22-1316, AND 33-32-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 15-31-552, MCA, is amended to read:

**“15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished.** (1) For purposes of voluntary withdrawal or dissolution as set forth in Title 35, upon request of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation’s final year of existence in Montana.

~~(3) For an authorized insurance company regulated under Title 33, the commissioner of insurance may furnish the certificate verifying that the corporation has filed all applicable returns and that taxes have been paid through and including the corporation’s final year of existence in Montana.”~~

**Section 2.** Section 33-2-307, MCA, is amended to read:

**“33-2-307. Requirements for eligible surplus lines insurers – list of eligible surplus lines insurers.** (1) If an unauthorized insurer is domiciled in any state, a surplus lines insurance producer may not place insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) is authorized to issue the same kind of property or casualty insurance in its domiciliary jurisdiction; and

(b) maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(i) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(ii) \$15 million. An insurer possessing less than \$15 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner’s finding must be based on factors that include:

- (A) the quality of management, capital, and surplus of a parent company;
- (B) company underwriting profit and investment income trends;
- (C) market availability; and
- (D) company record and reputation within the industry.

(2) The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4.5 million.

(3) If an unauthorized insurer is an alien insurer, a surplus lines insurance producer may not place insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer appears on the national association of insurance commissioners' ~~Non-Admitted Insurers Quarterly Listing~~ *Quarterly Listing of Alien Insurers*.

(4) A list of eligible surplus lines insurers must be published at least semiannually by the commissioner for a range of risks, including disability income insurance. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

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

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

**Section 3.** Section 33-2-407, MCA, is amended to read:

**"33-2-407. Standard valuation of reserve liabilities law.** (1) The commissioner shall annually value or cause to be valued the reserve liabilities (reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state issued on or before the operative date of the valuation manual. In calculating the reserves under this subsection, the commissioner may use group methods and approximate averages for fractions of a year or otherwise.

(2) The commissioner shall annually value or cause to be valued the reserve liabilities for all outstanding life insurance contracts, annuities, and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued after the operative date of the valuation manual in accordance with the valuation manual.

(3) In lieu of the valuation of the reserves required in this section of any foreign or alien insurer, the commissioner may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this part.

(4) Any insurer that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standards provided in this part may, with the approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum in this section. For the purposes of this section, the holding of additional reserves previously determined by an appointed actuary to be necessary to render the opinion required in subsections (5) and (6) may not be considered to be the adoption of a higher standard of valuation.

(5) (a) Each life insurer doing business in this state prior to the operative date of the valuation manual shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered necessary to its scope.

(b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection (5)(a) an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule make adequate provision for the insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. In developing the opinion, the qualified actuary shall consider the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts.

(c) The commissioner may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may consider necessary in order to render the opinion required by this subsection (5).

(d) Each opinion required by this subsection (5) must be governed by the following provisions:

(i) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

(ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or if the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare any supporting memorandum as is required by the commissioner.

(iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1996.

(iv) The opinion must apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(v) The opinion must be based on standards adopted from time to time by the actuarial standards board and on additional standards as the commissioner may prescribe by rule.

(vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be defined in rules by the commissioner.

(6) (a) After the operative date of the valuation manual, each life insurer doing business in this state shall annually submit the opinion of a qualified actuary regarding whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are:

- (i) computed appropriately;
- (ii) based on assumptions that satisfy contractual provisions;
- (iii) consistent with prior reported amounts; and
- (iv) in compliance with the applicable laws of this state.

(b) *After the operative date of the valuation manual, each life insurer doing business in this state shall also annually include in the opinion required in subsection (6)(a) an opinion by the same qualified actuary on whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The opinion required in this subsection (6)(b) must consider the reserves and related actuarial items in light of the assets held by the company with respect to those reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts.*

(c) A qualified actuary shall prepare a memorandum in support of each actuarial opinion under this subsection (6). The memorandum must be in the form and substance specified in the valuation manual and as provided by the commissioner.

(d) The opinion under this subsection (6):

(i) must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after the operative date of the valuation manual;

(ii) must apply to all policies and contracts subject to this subsection (6) and to other actuarial liabilities identified in the valuation manual; and

(iii) must be based on the actuarial standards board's standards and any additional standards prescribed in the valuation manual.

(e) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or if the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(f) For an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this state.

(g) (i) Except as provided in subsection (6)(g)(ii) (6)(g)(iii), the appointed actuary is not liable for damages to any person other than the insurer and the commissioner for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion.

(ii) The provisions of subsection (6)(g)(i) (6)(g)(i) do not apply in cases of fraud or willful misconduct.

(h) The commissioner shall define by rule any disciplinary action that may be taken by the commissioner against the insurer or the appointed actuary."

**Section 4.** Section 33-20-505, MCA, is amended to read:

**"33-20-505. Minimum nonforfeiture amounts.** (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts, as defined in this section.

(2) (a) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation

up to that time at rates of interest as indicated in subsection (3)(a) of the net considerations, as described in subsection (2)(b), paid prior to that time, decreased by the sum of:

(i) any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection (3)(a);

(ii) an annual contract charge of \$50 accumulated at rates of interest as indicated in subsection (3)(a);

(iii) any premium tax paid by the company for the contract accumulated at rates of interest as indicated in subsection (3)(a); and

(iv) the amount of any indebtedness to the company on the contract, including interest due and accrued.

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount must be an amount equal to 87.5% of the corresponding gross considerations credited to the contract during that contract year.

(3) (a) (i) The interest rate used in determining minimum nonforfeiture amounts must be an annual rate of interest determined as the lesser of 3% a year or the amount calculated under subsection (3)(a)(ii), which must be specified in the contract if the interest rate will be reset.

(ii) The interest rate may be the 5-year constant maturity treasury rate reported by the federal reserve board as of a date or an average over a period, rounded to the nearest 1/20th of 1%, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under subsection (3)(a)(iii) and reduced by 125 basis points whenever the resulting interest rate is not less than ~~1%~~ 0.15%.

(iii) The interest rate under subsection (3)(a)(ii) must apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the contract. The basis is the date or the average over a specified period that produces the value of the 5-year constant maturity treasury rate to be used at each redetermination date.

(b) During the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction described in subsection (3)(a)(ii) by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner considers the demonstration unacceptable.

(4) The commissioner may adopt rules to implement the provisions of subsection (3)(b) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the commissioner determines that adjustments are justified.”

**Section 5.** Section 33-22-211, MCA, is amended to read:

**“33-22-211. Time of payment of claims.** There shall be a provision as follows:

“Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid ~~immediately pursuant to 33-18-232~~ upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid.... (insert period for payment which must not be less frequently than monthly), and any balance

remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.””

**Section 6.** Section 33-22-1313, MCA, is amended to read:

“**33-22-1313. Association member assessments.** (1) (a) (i) For 2020 and each year thereafter, the commissioner shall assess each member insurer 1.2% of its total premium volume covering Montana residents, from the prior calendar year, regardless of type of license.

(ii) For purposes of subsection (1)(a)(i), total premium volume may not include premiums that member insurers collect on any coverage issued for excepted benefits as defined in 33-22-140.

(b) The board shall determine the timing of the assessment.

(c) The commissioner shall consider the board’s recommendation when determining the assessment amounts.

(d) The commissioner shall verify the amount of each insurer’s assessment based on annual financial statements and other reports determined to be necessary.

(2) The association shall determine and report to the commissioner the association’s reinsurance payments and other expenses for the previous calendar year, including administrative expenses and any incurred but not reported claims for the previous calendar year.

(a) The report must consider investment income and other appropriate gains.

(b) The report must include an estimate of the assessments needed to cover the expected reinsurance claims for the following calendar year.

(3) If assessments and other funds collected by the association exceed the actual losses and administrative expenses of the association, the board shall use the excess funds to offset future claims or to reduce future assessments.

(4) The commissioner may, after notice and hearing:

(a) suspend or revoke the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment;

(b) impose a penalty on any insurer that fails to pay an assessment when due; or

(c) use any power granted to the commissioner to collect any unpaid assessment.

(5) An eligible health insurer may not submit claims for reinsurance payments unless the insurer has a medical loss ratio of 80% or greater, as defined in ~~45 CFR 158.221~~ *45 CFR 158.232(f)*.”

**Section 7.** Section 33-22-1316, MCA, is amended to read:

“**33-22-1316. Administration of reinsurance payments.** (1) Claims that are incurred during a benefit year and are submitted for reimbursement in the following benefit year by the date established by the board in the plan of operation will be allocated to the benefit year in which they are incurred. Claims submitted after the date established by the board following the benefit year in which they were incurred will be allocated to the next benefit year in accordance with the board’s operating rules, policies, and procedures.

(2) If funds accumulated in the reinsurance program account in the state special revenue fund with respect to a benefit year are expected to be insufficient to pay all program expenses, claims for reimbursement, and other disbursements allocable to that benefit year, all claims for reimbursement allocable to that benefit year must be reduced proportionately to the extent necessary to prevent a deficiency in the funds for that benefit year. Any reduction in claims for reimbursement with respect to a benefit year must apply to all claims that are allocated to that benefit year without regard to

when those claims were submitted for reimbursement, and any reduction must be applied to each claim in the same proportion.

(3) If funds accumulated in the reinsurance program account in the state special revenue fund exceed the actual claims for reimbursement and program expenses of the association in a given benefit year, the board shall use such excess funds to pay reinsurance claims in successive benefit years and may recommend to the commissioner a reduction in the assessment amount for the following year.

(4) For each applicable benefit year, the board shall notify eligible health insurers of reinsurance payments to be made for the applicable benefit year by the date established by the board in the plan of operation in the year following the applicable benefit year.

(5) By ~~August 15~~ *December 31* of the year following the applicable benefit year, the board shall disburse all applicable reinsurance payments payable to an eligible health insurer.”

**Section 8.** Section 33-32-102, MCA, is amended to read:

**“33-32-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Adverse determination”, except as provided in 33-32-402, means:

(a) a determination by a health insurance issuer or its designated utilization review organization that, based on the provided information and after application of any utilization review technique, a requested benefit under the health insurance issuer’s health plan is denied, reduced, or terminated or that payment is not made in whole or in part for the requested benefit because the requested benefit does not meet the health insurance issuer’s requirement for medical necessity, appropriateness, health care setting, level of care, or level of effectiveness or is determined to be experimental or investigational;

(b) a denial, reduction, termination, or failure to provide or make payment in whole or in part for a requested benefit based on a determination by a health insurance issuer or its designated utilization review organization of a person’s eligibility to participate in the health insurance issuer’s health plan;

(c) any prospective review or retrospective review of a benefit determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit; or

(d) a rescission of coverage determination.

(2) “Ambulatory review” means a utilization review of health care services performed or provided in an outpatient setting.

(3) “Authorized representative” means:

(a) a person to whom a covered person has given express written consent to represent the covered person;

(b) a person authorized by law to provide substituted consent for a covered person; or

(c) a family member of the covered person, or the covered person’s treating health care provider, only if the covered person is unable to provide consent.

(4) “Case management” means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or otherwise complex health conditions.

(5) “Certification” means a determination by a health insurance issuer or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the health insurance issuer’s requirements for medical necessity, appropriateness, health care setting, level of care, and level of effectiveness.

(6) "Clinical peer" means a physician or other health care provider who:

- (a) holds a nonrestricted license in a state of the United States; and
- (b) is trained or works in the same or a similar specialty to the specialty that typically manages the medical condition, procedure, or treatment under review.

(7) "Clinical review criteria" means the written policies, written screening procedures, decision abstracts, determination rules, clinical and medical protocols, practice guidelines, or any other criteria or rationale used by a health insurance issuer or its designated utilization review organization to determine the medical necessity of health care services.

(8) "Concurrent review" means a utilization review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional, or another inpatient or outpatient health care setting.

(9) "Cost sharing" means the share of costs that a covered member pays under the health insurance issuer's health plan, including maximum out-of-pocket, deductibles, coinsurance, copayments, or similar charges, but does not include premiums, balance billing amounts for out-of-network providers, or the cost of noncovered services.

(10) "Covered benefits" or "benefits" means those health care services to which a covered person is entitled under the terms of a health plan.

(11) "Covered person" means a policyholder, a certificate holder, a member, a subscriber, an enrollee, or another individual participating in a health plan.

(12) "Discharge planning" means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives after discharge from a facility.

(13) "Emergency medical condition" has the meaning provided in 33-36-103.

(14) "Emergency services" has the meaning provided in 33-36-103.

(15) "External review" describes the set of procedures provided for in Title 33, chapter 32, part 4.

(16) "Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health insurance issuer or its designated utilization review organization at the completion of the health insurance issuer's internal grievance process as provided in Title 33, chapter 32, part 3.

(17) "Grievance" means a written complaint or an oral complaint if the complaint involves an urgent care request submitted by or on behalf of a covered person regarding:

- (a) availability, delivery, or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

- (b) claims payment, handling, or reimbursement for health care services;

or

- (c) matters pertaining to the contractual relationship between a covered person and a health insurance issuer.

(18) "Health care provider" or "provider" means a person, corporation, facility, or institution licensed by the state to provide, or otherwise lawfully providing, health care services, including but not limited to:

- (a) a physician, physician assistant, advanced practice registered nurse, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, licensed addiction counselor, or licensed professional counselor; and

- (b) an officer, employee, or agent of a person described in subsection (18)(a) acting in the course and scope of employment.

(19) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease, including the provision of pharmaceutical products or services or durable medical equipment.

(20) "Health insurance issuer" has the meaning provided in 33-22-140.

(21) "Medical necessity" means health care services that a health care provider exercising prudent clinical judgment would provide to a patient for the purpose of preventing, evaluating, diagnosing, treating, curing, or relieving a health condition, illness, injury, or disease or its symptoms and that are:

(a) in accordance with generally accepted standards of practice;

(b) clinically appropriate in terms of type, frequency, extent, site, and duration and are considered effective for the patient's illness, injury, or disease; and

(c) not primarily for the convenience of the patient or health care provider and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the patient's illness, injury, or disease.

(22) "Network" means the group of participating providers providing services to a managed care plan.

(23) "Participating provider" means a health care provider who, under a contract with a health insurance issuer or with its contractor or subcontractor, has agreed to provide health care services to covered persons with the expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health insurance issuer.

(24) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, or any similar entity or combination of entities in this subsection.

(25) "Preservice claim" means a request for benefits or payment from a health insurance issuer for health care services that, under the terms of the health insurance issuer's contract of coverage, requires authorization from the health insurance issuer or from the health insurance issuer's designated utilization review organization prior to receiving the services.

(26) "Prospective review" means a utilization review conducted of a preservice claim prior to an admission or a course of treatment.

(27) (a) "Rescission" means a cancellation or the discontinuance of coverage under a health plan that has a retroactive effect.

(b) The term does not include a cancellation or discontinuance under a health plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent that the cancellation or discontinuance is attributable to a failure to timely pay required premiums or contributions toward the cost of coverage.

(28) (a) "Retrospective review" means a review of medical necessity conducted after services have been provided to a covered person.

(b) The term does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

(29) "Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a health care provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service.

(30) "Stabilize" means, with respect to an emergency condition, to ensure that no material deterioration of the condition is, within a reasonable medical

probability, likely to result from or occur during the transfer of the individual from a facility.

(31) (a) “Urgent care request” means a request for a health care service or course of treatment with respect to which the time periods for making a nonurgent care request determination could:

(i) seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or

(ii) subject the covered person, in the opinion of a health care provider with knowledge of the covered person’s medical condition, to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

(b) Except as provided in subsection (31)(c), in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the health insurance issuer shall apply the judgment of a prudent lay person who possesses an average knowledge of health and medicine.

(c) Any request that a health care provider with knowledge of the covered person’s medical condition determines is an urgent care request within the meaning of subsection (31)(a) must be treated as an urgent care request.

(32) “Utilization review” means a set of formal techniques designed to monitor the use of or to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinions, certification, concurrent review, case management, discharge planning, or retrospective review.

(33) “Utilization review organization” means an entity that conducts utilization review for one or more of the following:

(a) an employer with employees who are covered under a health benefit plan or health insurance policy;

(b) a health insurance issuer providing review for its own health plans or for the health plans of another health insurance issuer;

(c) a preferred provider organization or health maintenance organization; and

(d) any other individual or entity that provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits to a person treated by a health care provider under a policy, plan, or contract.”

**Section 9. Effective date.** [This act] is effective July 1, 2021.

Approved May 12, 2021

## CHAPTER NO. 472

[HB 72]

AN ACT REVISING FUNDING OF THE HIGHWAY PATROL OFFICERS’ RETIREMENT SYSTEM; PROVIDING FOR STATE SUPPLEMENTAL CONTRIBUTIONS FROM A STATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR TRANSFERS; AMENDING SECTION 44-1-504, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

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

**Section 1.** Section 44-1-504, MCA, is amended to read:

“**44-1-504. Special revenue account to partially fund highway patrol officers’ salaries.** (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is for the department of justice to fund, pursuant to 2-18-303(5):

(a) the base salary and associated operating costs for highway patrol officer positions; and

(b) biennial salary increases for highway patrol officers.

(3) (a) *By August 15, 2021, the state treasurer shall transfer \$4 million from the account to the highway patrol officers' retirement pension trust fund.*

(b) *By August 15, 2022, the state treasurer shall transfer \$2 million from the account to the highway patrol officers' retirement pension trust fund.*

(4) *Starting July 1, 2023, and in each fiscal year thereafter, the state treasurer shall transfer \$500,000 from the account to the highway patrol officers' retirement pension trust fund by August 15."*

**Section 2. Effective date.** [This act] is effective July 1, 2021.

**Section 3. Contingent termination.** [This act] terminates when the public employees' retirement board notifies the code commissioner in writing that the board's actuary has determined that the funded ratio for the highway patrol officers' retirement pension trust system is at least 100%. The board shall notify the code commissioner within 30 days of the actuary's determination.

Approved May 12, 2021

## CHAPTER NO. 473

[HB 115]

AN ACT INCREASING PENALTIES FOR 5TH AND SUBSEQUENT DUI OFFENSES; AMENDING SECTION 61-8-731, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 61-8-731, MCA, is amended to read:

**"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) (i) being sentenced to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 13 months or more than 2 years. The court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the sentence must be served on probation. The imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole.

(ii) being sentenced to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(iii) a fine in an amount of not less than \$5,000 or more than \$10,000; or

(b) (i) being sentenced to an appropriate treatment court program for a term of not more than 5 years, with required completion; and

(ii) a fine in an amount of not less than \$5,000 or more than \$10,000.

(c) If sentenced under subsection (1)(b), the person may be entitled to a suspended sentence and is not eligible for a deferred imposition of sentence.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program approved by the department of corrections.

(3) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$5,000 or more than \$10,000, or both previously sentenced under subsection (1)(a) or (1)(b), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than 10 years. The person is not eligible for a deferred imposition of sentence.

(4) If a person has previously been convicted and sentenced under subsection (3), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than 25 years. The person is not eligible for a deferred imposition of sentence.

(5) If a person who is presently being sentenced has previously been convicted and sentenced under subsection (4) on one or more occasions, the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not less than 5 years or more than 25 years. The first 5 years of the sentence may not be suspended.

~~(4)~~(6) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(5)~~(7) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

- (c) payment of costs of assigned counsel as provided in 46-8-113;
- (d) community service;
- (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
- (f) any combination of the restrictions or conditions listed in subsections ~~(5)(a)~~ (7)(a) through ~~(5)(e)~~ (7)(e).

~~(6)(8)~~ Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

~~(7)(9)~~ The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section.”

**Section 2. Coordination instruction.** If both Senate Bill No. 365 and [this act] are passed and approved, then [section 4 of Senate Bill No. 365] must be amended as follows:

**“Section 4. Penalty for driving under influence – fourth and subsequent offenses.** (1) (a) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-106 or any combination of three or more convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in [section 2(1)(a)], is guilty of a felony and shall be punished by:

(i) being sentenced to the department of corrections for a term of not less than 13 months or more than 2 years for placement in either an appropriate correctional facility or a program, followed by a consecutive term of 5 years to the Montana state prison or the Montana women’s prison, all of which must be suspended, and a fine of not less than \$5,000 or more than \$10,000; or

(ii) being sentenced to a term of up to 5 years in an appropriate treatment court program, with required completion, and a fine of not less than \$5,000 or more than \$10,000. If sentenced under this alternative, the person may be entitled to a suspended sentence but is not eligible for a deferred imposition of sentence.

(b) Regarding the sentence provided for in subsection (1)(a)(i):

(i) the imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole;

(ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by the department of corrections;

(iii) following initial placement of a defendant in a residential alcohol treatment program facility, the department of corrections may, at its discretion, place the offender in another facility or program;

(iv) the court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the 13-month to 2-year term must be served on probation with the conditions that:

(A) the person abide by the standard conditions of probation promulgated by the department of corrections;

(B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section does so;

(C) the person may not frequent an establishment where alcoholic beverages are served;

(D) the person may not consume alcoholic beverages;

(E) the person may not operate a motor vehicle unless authorized by the person's probation officer;

(F) the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(G) the person submit to random or routine drug and alcohol testing; and

(H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system; and

(v) the sentencing judge may impose on the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(A) payment of a fine as provided in 46-18-231;

(B) payment of costs as provided in 46-18-232 and 46-18-233;

(C) payment of costs of assigned counsel as provided in 46-8-113;

(D) community service;

(E) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(F) any combination of the restrictions or conditions listed in subsections (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, ~~who was previously placed in a residential alcohol treatment program under subsection (1)(a)(i), whether or not the person successfully completed the program, and who has also been convicted under either 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [section 2(1)(a)], and the person was previously sentenced under subsection (1)(a)(i) or (1)(a)(ii), the person shall be punished by being sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or being fined an amount a fine of not less than \$5,000 or more than \$10,000, or both and by imprisonment in the state prison for a term of not more than 10 years. The person is not eligible for a deferred imposition of sentence.~~

(3) *If a person has previously been convicted and sentenced under subsection (2), the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not more than 25 years. The person is not eligible for a deferred imposition of sentence.*

(4) *If a person who is presently being sentenced has previously been convicted and sentenced under subsection (3) on one or more occasions, the person shall be punished by a fine of not less than \$5,000 or more than \$10,000 and by imprisonment in the state prison for a term of not less than 5 years or more than 25 years. The first 5 years of the sentence may not be suspended.*

~~(3)~~(5) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to a person sentenced under this section.

~~(4)~~(6) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5."

**Section 3. Applicability.** [This act] applies to offenses committed on or after October 1, 2021.

Approved May 12, 2021

## CHAPTER NO. 474

[HB 178]

AN ACT REVISING LAWS RELATED TO COUNTY AND MULTICOUNTY VETERANS' SERVICE OFFICES; CLARIFYING GRANT DISPERSAL; AMENDING SECTION 10-2-116, MCA; AMENDING SECTION 6, CHAPTER 462, LAWS OF 2009; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 10-2-116, MCA, is amended to read:

**"10-2-116. ~~(Temporary)~~ Funding county veterans' service offices -- grant -- conditions and reporting.** (1) (a) The board shall administer a grant program and award *block* grants to county and multicounty veterans' service offices from funding appropriated by the legislature for the purposes of this section.

(b) The amount paid to each county or multicounty veterans' service office is calculated by multiplying the total annual appropriation for the grant program by the ratio of the number of veterans residing in a county or counties serviced by a county or multicounty veterans' service office to the total number of veterans residing in all counties participating in the grant program and rounding to the nearest whole dollar amount. The number of veterans residing in a county is determined using the most recent data reported by the U.S. department of veterans affairs.

(c) *After the board determines that a county or multicounty veterans' service office has met the eligibility requirements provided for in subsection (2), the board shall distribute the amount paid as calculated in subsection (1)(b) to the county or multicounty veterans' service office as a block grant by August 31 of each state fiscal year.*

~~(e)~~(d) The board shall ensure that all funds are distributed to eligible county or multicounty veterans' service offices.

(2) To receive a grant, a county or multicounty veterans' service office shall:

(a) *submit a grant application provided by the board that provides evidence that the requirements in this subsection (2) have been met;*

(b) *submit all required documentation and reports to the board by July 15 of each state fiscal year;*

~~(a)~~(c) have established county funding as provided for in 15-10-425 or through other means provided by law;

~~(b)~~(d) have established a physical office at an accessible location where veterans and their family members may visit in person;

~~(e)~~(e) provide for at least one veterans' service officer;

(d)(f) ensure that each county veterans' service officer meets the qualifications and requirements of 10-2-115; and

(e)(g) ensure that all of the grant money received pursuant to this section is spent in support of veterans and their family members and may not be used for any other purpose.

(3) If the requirements of subsection (2) are met, a grant must be awarded:

(a) to a county veterans' service office established before July 1, 2019;

(b) to a new county veterans' service office during the biennium immediately following the date it was established; and

(c) each subsequent fiscal year a county veterans' service office continues to meet the requirements in subsection (2).

(4) The amount of grant money a county veterans' service office receives is in proportion to the number of veterans residing in the county or counties served by that office as specified in subsection (1)(b).

(5) A county veterans' service office that receives a grant shall report data and information to the department at the end of the fiscal year in which a grant was dispersed. Reported data and information shall *must* encompass the following:

(a) disability benefit claims data and information, including but not limited to:

(i) the number of claim forms submitted by the county veterans' service office to the U.S. department of veterans affairs; and

(ii) the number of notices of disagreement or appeals submitted through the county veterans' service office to the U.S. department of veterans affairs;

(b) the number of medical enrollments submitted by the county veterans' service office to the U.S. department of veterans affairs;

(c) the number of veterans' education enrollments submitted by the county veterans' service office to the U.S. department of veterans affairs;

(d) the number of county and state burial benefits processed by the county veterans' service office; and

(e) a description of any other ancillary services provided to county veterans, such as transportation services, mental health services, homeless services, crisis intervention, and military records requests. (~~Terminates June 30, 2023--sec. 6, Ch. 462, L. 2019.~~)

**Section 2.** Section 6, Chapter 462, Laws of 2019, is amended to read:

**Section 6. Termination.** [This act Section 2] terminates June 30, 2023."

**Section 3. Effective date.** [This act] is effective July 1, 2021.

**Section 4. Termination.** [This act] terminates June 30, 2023.

Approved May 12, 2021

## CHAPTER NO. 475

[HB 181]

AN ACT TEMPORARILY REDIRECTING AND STATUTORILY APPROPRIATING TECHNOLOGY FUNDING TO E-RATE BROADBAND MATCHING FUNDS; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-9-534, 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.** Section 20-9-534, MCA, is amended to read:

**"20-9-534. Statutory appropriation for school technology purposes.** (1) The amount of \$1 million a year is statutorily appropriated,

as provided in 17-7-502, from the school facility and technology account established in 20-9-516 ~~for grants for school technology purposes to the office of public instruction.~~

(2) *Twenty-five percent of the appropriation under subsection (1) must be allocated for providing funds for schools to use as state matching funds for special construction under the federal e-rate broadband program pursuant to 47 CFR 54.505, provided that none of the state matching funds may be used by schools for self-construction of their own or portions of their own networks.*

(3) *By the third Friday in July, the superintendent of public instruction shall allocate the remaining 75% of the appropriation under subsection (1) for grants for school technology purposes. The allocation to each district must be based on the ratio of the district's BASE budget to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533.*

(4) *If any of the funds allocated under subsection (2) are unspent as of June 30 of each fiscal year, the unspent funds must be added to the funds allocated under subsection (3) for the subsequent fiscal year.*

~~(2) By the third Friday in July, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533."~~

**Section 2. Effective date.** [This act] is effective July 1, 2021.

**Section 3. Applicability.** [This act] applies to school fiscal years beginning on or after July 1, 2021.

**Section 4. Termination.** [This act] terminates June 30, 2023.

Approved May 12, 2021

## CHAPTER NO. 476

[HB 191]

AN ACT REVISING THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY; REVISING THE DEFINITION OF HOUSEHOLD INCOME; INCREASING THE MAXIMUM CREDIT THAT MAY BE CLAIMED; AMENDING SECTIONS 15-30-2337 AND 15-30-2340, MCA; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES.

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

**Section 1.** Section 15-30-2337, MCA, is amended to read:

**"15-30-2337. Residential property tax credit for elderly – definitions.** As used in 15-30-2337 through 15-30-2341, 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 15-30-2338.

(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 \$12,600 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 2.** Section 15-30-2337, MCA, is amended to read:

**"15-30-2337. Residential property tax credit for elderly – definitions.** As used in 15-30-2337 through 15-30-2341, 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 15-30-2338.

(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~~ \$12,600 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 3.** Section 15-30-2337, MCA, is amended to read:

**"15-30-2337. Residential property tax credit for elderly – definitions.** As used in 15-30-2337 through 15-30-2341, 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 15-30-2338.

(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~~ \$12,600 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 4.** Section 15-30-2337, MCA, is amended to read:

**"15-30-2337. Residential property tax credit for elderly – definitions.** As used in 15-30-2337 through 15-30-2341, 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 15-30-2338.

(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~~ \$12,600 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 15-30-2337, MCA, is amended to read:

**"15-30-2337. Residential property tax credit for elderly – definitions.** As used in 15-30-2337 through 15-30-2341, 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 15-30-2338.

(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~~ \$12,600 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 6.** Section 15-30-2340, MCA, is amended to read:

**"15-30-2340. Residential property tax credit for elderly – computation of relief.** The amount of the tax credit granted under the provisions of 15-30-2337 through 15-30-2341 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~~ *\$1,150*.

(7) Relief under 15-30-2337 through 15-30-2341 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 7.** Section 15-30-2340, MCA, is amended to read:

**"15-30-2340. Residential property tax credit for elderly -- computation of relief.** The amount of the tax credit granted under the provisions of 15-30-2337 through 15-30-2341 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~~ *\$1,150*.

(7) Relief under 15-30-2337 through 15-30-2341 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 15-30-2340, MCA, is amended to read:

**"15-30-2340. Residential property tax credit for elderly -- computation of relief.** The amount of the tax credit granted under the provisions of 15-30-2337 through 15-30-2341 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~~ \$1,150.

(7) Relief under 15-30-2337 through 15-30-2341 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 9.** Section 15-30-2340, MCA, is amended to read:

**"15-30-2340. Residential property tax credit for elderly -- computation of relief.** The amount of the tax credit granted under the provisions of 15-30-2337 through 15-30-2341 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 \$1,150.

(7) Relief under 15-30-2337 through 15-30-2341 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 10.** Section 15-30-2340, MCA, is amended to read:

**"15-30-2340. Residential property tax credit for elderly – computation of relief.** The amount of the tax credit granted under the provisions of 15-30-2337 through 15-30-2341 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~~ *\$1,150*.

(7) Relief under 15-30-2337 through 15-30-2341 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 11. Effective dates -- applicability.** (1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 and 6] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 2 and 7] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 3 and 8] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 4 and 9] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 5 and 10] are effective October 1, 2025, and apply to the income tax years beginning after December 31, 2025.

**Section 12. Termination.** (1) [Sections 1 and 6] terminate December 31, 2022.

- (2) [Sections 2 and 7] terminate December 31, 2023.
- (3) [Sections 3 and 8] terminate December 31, 2024.
- (4) [Sections 4 and 9] terminate December 31, 2025.
- (5) [Section 13] terminates January 1, 2025.

**Section 13. Contingent termination – legislative intent – specific findings – report to legislative finance committee.** (1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Sections 1 and 6] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Sections 2 and 7] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Sections 3 and 8] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Sections 4 and 9] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or  
(ii) require the state of Montana to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act, Public Law 117-2;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of this act may result in a reduction of funds or require the state to repay or refund to the federal government funds based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of this act would more likely than not result in a reduction of funds or require the state to repay or refund to the federal government funds based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5).

Approved May 12, 2021

## CHAPTER NO. 477

[HB 231]

AN ACT REVISING CERTIFICATES OF NEED TO INCLUDE ONLY LONG-TERM CARE FACILITIES AND SERVICES; AND AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-304, 50-5-307, 50-5-308, 50-5-309, AND 53-6-110, MCA.

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

**Section 1.** Section 50-5-101, MCA, is amended to read:

**“50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accreditation” means a designation of approval.

(2) “Accreditation association for ambulatory health care” means the organization nationally recognized by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation status to the outpatient centers for surgical services that it finds meet its standards and requirements.

(3) “Activities of daily living” means tasks usually performed in the course of a normal day in a resident’s life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) “Adult day-care center” means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) “Adult foster care home” means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) “Aged person” means a person as defined by department rule as aged.

(ii) “Custodial care” means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person’s basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) “Disabled adult” means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) “Light personal care” means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) “Affected person” means an applicant for a certificate of need, a ~~health~~ *long-term* care facility located in the geographic area affected by the application, an agency that establishes rates for ~~health~~ *long-term* care facilities, or a third-party payer who reimburses ~~health~~ *long-term* care facilities in the area affected by the proposal.

(7) “Assisted living facility” means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) “Capital expenditure” means:

(a) an expenditure made by or on behalf of a ~~health care~~ *long-term care* facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) “Certificate of need” means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) “Chemical dependency facility” means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) “Clinical laboratory” means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) “College of American pathologists” means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) “Commission on accreditation of rehabilitation facilities” means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) “Comparative review” means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department’s review of the other applications.

(15) “Congregate” means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) “Construction” means the physical erection of a *new* health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

(a) an existing health care facility; or

(b) a *long-term care* facility as defined in 50-5-301.

(17) “Council on accreditation” means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) “Critical access hospital” means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

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

(20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and requirements.

(21) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

(22) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(23) "Federal acts" means federal statutes for the construction of health care facilities.

(24) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(25) "Healthcare facilities accreditation program" means the program nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(27) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(28) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(29) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(30) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(31) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided must include medical personnel available to provide emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(c) The emergency care requirement for a hospital that specializes in providing health services for psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed registered nurses.

(32) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmiry--A" provides outpatient and inpatient care;

(b) an "infirmiry--B" provides outpatient care only.

(33) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(34) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(35) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(36) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(37) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(38) “Medical assistance facility” means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual’s attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(39) “Mental health center” means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(40) “Nonprofit health care facility” means a health care facility owned or operated by one or more nonprofit corporations or associations.

(41) “Offer” means the representation by a health care facility that it can provide specific health services.

(42) (a) “Outdoor behavioral program” means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

- (i) serves either adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services; and
- (iii) provides all or part of its services in the outdoors.

(b) “Outdoor behavioral program” does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(43) “Outpatient center for primary care” means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(44) “Outpatient center for surgical services” means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(45) “Patient” means an individual obtaining services, including skilled nursing care, from a health care facility.

(46) “Person” means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(47) “Personal care” means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(48) “Practitioner” means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(49) “Recovery care bed” means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(50) “Rehabilitation facility” means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination

of these services and in which the major portion of the services is furnished within the facility.

(51) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(52) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(53) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(54) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(55) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(56) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(57) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

- (i) patients with a cardiac condition;
- (ii) patients with an orthopedic condition;
- (iii) patients undergoing a surgical procedure; or
- (iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (57), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

- (i) psychiatric hospitals;
- (ii) rehabilitation hospitals;
- (iii) children's hospitals;
- (iv) long-term care hospitals; or
- (v) critical access hospitals.

(58) "State ~~health~~ *long-term* care facilities plan" means the plan prepared by the department to project the need for ~~health~~ *long-term* care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(59) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

(60) "The joint commission" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements."

**Section 2.** Section 50-5-301, MCA, is amended to read:

**"50-5-301. When certificate of need is required – definitions – report on capital expenditures not subject to certificate of need.**

(1) Unless a person has submitted an application for and is the holder of a

certificate of need granted by the department, the person may not initiate any of the following:

~~(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds \$1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds \$1.5 million.~~

~~(b)(a) a change in the bed capacity of a health long-term care facility through an increase in the number of beds or a relocation of beds from one health long-term care facility or site to another, unless:~~

~~(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;~~

~~(ii) a letter of intent is submitted to the department; and~~

~~(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health long-term care facilities plan;~~

~~(c)(b) the addition of a health service that is offered by or on behalf of a health long-term care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of \$150,000 or more;~~

~~(d)(c) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health long-term care facility unless:~~

~~(i) the person submits the letter of intent required by 50-5-302(2); and~~

~~(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;~~

~~(e)(d) the construction, development, or other establishment of a health long-term care facility that is being replaced or that did not previously exist, by any person, including another type of health long-term care facility;~~

~~(f) the expansion of the geographical service area of a home health agency;~~

~~(g)(e) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or~~

~~(h)(f) the provision by a hospital of services for home health care; long-term care; or inpatient chemical dependency treatment; or~~

~~(i) the construction, development, or other establishment of a facility for ambulatory surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.~~

~~(2) (a) For purposes of this part, the following definitions apply:~~

~~(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility, or an inpatient chemical dependency facility. The term does not include:~~

~~(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h);~~

~~(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including licensed addiction counselors; or~~

~~(iii) a rehabilitation facility or an outpatient center for surgical services.~~

(b) —(i) “~~Long-term~~ *long-term* care facility” means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii)(b) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(3) This section may not be construed to require a ~~health~~ *long-term* care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a ~~health~~ *long-term* care facility.

(4) (a) *When a person incurs an obligation by or on behalf of a long-term care facility for a capital expenditure that exceeds \$5 million and does not otherwise require a certificate of need under this part, the person shall, upon completion of the project:*

(i) *notify the department of the total amount of the expenditure; and*

(ii) *provide a description of the project.*

(b) *This subsection (4) does not apply to a capital expenditure that involves the acquisition of an existing long-term care facility.”*

**Section 3.** Section 50-5-302, MCA, is amended to read:

**“50-5-302. Letter of intent – application and review process.**

(1) The department may adopt rules including but not limited to rules for:

(a) the form and content of letters of intent and applications;

(b) the scheduling of reviews;

(c) the format of public informational hearings and reconsideration hearings;

(d) the circumstances under which applications may be comparatively reviewed; and

(e) the circumstances under which a certificate of need may be approved for the use of hospital beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care.

(2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more of an existing ~~health~~ *long-term* care facility, they shall submit to the department a letter noting intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department.

(4) The department may determine that the proposals should be comparatively reviewed with similar proposals that are also subject to review.

(5) On the 10th day of each month, the department shall publish in a newspaper of general circulation in the area to be served by the proposal a description of each letter of intent received by the department during the preceding calendar month. Within 30 days of the publication, any person who desires comparative review with a proposal described in the publication must submit a letter of intent requesting comparative review.

(6) The department shall give to each person submitting a letter of intent written notice of the deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.

(7) Within 20 working days after receipt of an application, the department shall determine whether it is complete and, if the application is found incomplete, shall send a written request to the applicant specifying the necessary additional information and a date by which the additional information must be submitted to the department. The department shall allow at least 15 days after the mailing of its written request for the submission of the additional information. Upon receipt of the additional information from the applicant, the department has an additional 15 working days to determine if the application is complete and, if the application is still incomplete, to send a notice to the applicant that the application is incomplete.

(8) If the applicant fails to submit the necessary additional information requested by the department by the deadline prescribed by the department, the application is considered withdrawn.

(9) If the department fails to send either the request for additional information or the notice of incompleteness required by subsection (7) within the period prescribed in subsection (7), the application is considered to be complete on the last day of the time period during which the notice should have been sent.

(10) The review period for an application may be no longer than 90 calendar days after the application is initially received or, if the application is to be comparatively reviewed as provided in subsection (5), within 90 days after all applications to be comparatively reviewed are received. A longer period is permitted with the consent of all affected applicants.

(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities affecting the same health service area.

(13) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period.

(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to issue the certificate of need."

**Section 4.** Section 50-5-304, MCA, is amended to read:

**"50-5-304. Review criteria, required findings, and standards.** The department shall by rule promulgate and use, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the degree to which the proposal being reviewed:

(a) demonstrates that the service is needed by the population within the service area defined in the proposal;

(b) provides data that demonstrates the need for services contrary to the current state ~~health~~ *long-term* care facilities plan, including but not limited to waiting lists, projected service volumes, differences in cost and quality of services, and availability of services; or

(c) is consistent with the current state ~~health~~ *long-term* care facilities plan;

(2) the need that the population served or to be served by the proposal has for the services;

(3) the availability of less costly quality-equivalent or more effective alternative methods of providing the services;

(4) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing **health long-term care** services by the person proposing the **health** service;

(5) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided;

(6) the consistency of the proposal with joint planning efforts by health care providers in the area;

(7) the availability of resources, including health and management personnel and funds for capital and operating needs, for the provision of services proposed to be provided and the availability of alternative uses of the resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the **health long-term care** services proposed to be provided to ancillary or support services;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing **health long-term care** services by the person proposing the construction project;

(10) the distance, convenience, cost of transportation, and accessibility of **health** services *offered by long-term care facilities* for persons who live outside urban areas in relation to the proposal; and

(11) in the case of a project to add long-term care facility beds:

(a) the need for the beds that takes into account the current and projected occupancy of long-term care beds in the community;

(b) the current and projected population over 65 years of age in the community; and

(c) other appropriate factors.”

**Section 5.** Section 50-5-307, MCA, is amended to read:

**“50-5-307. Civil penalty – injunction.** (1) A person who violates the terms of 50-5-301 is subject to a civil penalty of not less than \$1,000 or more than \$10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the **health long-term care** facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1).”

**Section 6.** Section 50-5-308, MCA, is amended to read:

**“50-5-308. Special circumstances.** The department shall issue a certificate of need for a proposed capital expenditure if:

(1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and

(2) the department has determined that the *long-term care* facility or service for which the capital expenditure is proposed is needed and that

the obligation of the capital expenditure is consistent with the state health *long-term* care facilities plan.”

**Section 7.** Section 50-5-309, MCA, is amended to read:

“**50-5-309. Exemptions from certificate of need review.** The following are exempt from a certificate of need review:

- (1) construction of a state-owned *long-term care* facility; and
- (2) repair or replacement of a *long-term care* facility damaged or destroyed as a result of fire, storm, civil disturbance, or an act of God if the use of the facility after repair or replacement is within the scope of the facility’s original license issued pursuant to Title 50, chapter 5, part 2.”

**Section 8.** Section 53-6-110, MCA, is amended to read:

“**53-6-110. Report and recommendations on medicaid funding.**

(1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

- (a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;
- (b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

- (i) trends in unit costs for services, including inflation;
- (ii) trends in use of services;
- (iii) trends in medicaid recipient levels; and
- (iv) the effects of new and projected *long-term care* facilities and services for which a need has been identified in the state health *long-term* care facilities plan.

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health care facilities plan.

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) Beginning November 15 of each year through June 15 of the following year, the department of public health and human services shall provide to the legislative fiscal analyst monthly reports containing estimates of the cost for medicaid services and a budget status report for all department programs. The department shall also provide a fiscal yearend summary of medicaid costs and the department budget status report prior to the first legislative finance committee meeting following the end of the fiscal year. The reports must be presented in a format mutually agreed to by the legislative fiscal analyst and the department.”

Approved May 12, 2021

## CHAPTER NO. 478

[HB 267]

AN ACT GENERALLY REVISING LAWS RELATED TO APPROACHING AND PASSING SCHOOL BUSES; PROHIBITING A MOTOR VEHICLE FROM OVERTAKING A STOPPED SCHOOL BUS ON THE RIGHT; PROHIBITING A SCHOOL BUS FROM ACTUATING FLASHING RED LIGHTS WHEN THE BUS IS STOPPED OUTSIDE OF THE ROADWAY TO RECEIVE OR

DISCHARGE SCHOOL CHILDREN; REQUIRING USE OF EXTENDED STOP ARMS IN CERTAIN CIRCUMSTANCES; REQUIRING SCHOOL DISTRICT TRUSTEES TO APPROVE EACH BUS STOP THAT REQUIRES A SCHOOL CHILD TO CROSS THE STREET; PROVIDING PENALTIES; AMENDING SECTIONS 61-8-301 AND 61-8-351, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 61-8-301, MCA, is amended to read:

**“61-8-301. Reckless driving – reckless endangerment of highway worker.** (1) A person commits the offense of reckless driving if the person:

(a) operates a vehicle in willful or wanton disregard for the safety of persons or property; or

(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection (1)(b) does not apply to situations described in 61-8-351(6)(7).

(2) A municipality may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving or of reckless endangerment of a highway worker is subject to the penalties provided in 61-8-715.

(4) (a) A person commits the offense of reckless endangerment of a highway worker if the person purposely, knowingly, or negligently drives a motor vehicle in a highway work zone in a manner that endangers persons or property or if the person purposely removes, ignores, or intentionally strikes an official traffic control device in a work zone for reasons other than:

(i) avoidance of an obstacle;

(ii) an emergency; or

(iii) to protect the health and safety of an occupant of the vehicle or of another person.

(b) As used in this section:

(i) “highway worker” means an employee of the department of transportation, a local authority, a utility company, or a private contractor; and

(ii) “work zone” has the meaning provided in 61-8-314.”

**Section 2.** Section 61-8-351, MCA, is amended to read:

**“61-8-351. Meeting or passing school bus – vehicle operator liability for violation – penalty.** (1) ~~Upon overtaking from either direction~~

(a) ~~When a school bus that has stopped on the highway roadway or street to receive or discharge school children has actuated flashing red lights as specified in 61-9-402, a driver of a motor vehicle that is approaching the school bus from either direction:~~

~~(a)(i) shall stop the motor vehicle not less than approximately 30 feet before reaching the from the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and~~

~~(b)(ii) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and past the school bus until the school bus ceases operation of its visual flashing red signal lights.~~

~~(b) A driver of a motor vehicle may not overtake a stopped school bus on the right side of the school bus.~~

~~(2) The driver of a motor vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must~~

~~be prepared to stop when meeting or overtaking from either direction~~ *When a school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by ~~has actuated~~ flashing amber lights as specified in 61-9-402, a driver of a motor vehicle that is approaching the school bus from either direction shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and shall be prepared to stop on the actuation of flashing red lights when the school bus has stopped.*

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height ~~and, in addition,~~

(4) ~~Each bus used for the transportation of school children must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever only when the school bus is stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a~~

(a) ~~A school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a school bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.~~

(b) ~~If a school bus is stopped outside of the roadway and the school bus will receive or discharge school children in a location outside of the roadway, the school bus may not actuate the flashing red lights so long as the school children do not enter the roadway.~~

~~(4) The requirements that a driver of a motor vehicle shall stop when a school bus receives or discharges school children under subsection (1) and the requirements that amber and red lights must be actuated by a school bus driver under subsection (3) do not apply when a school bus receives or discharges school children in a designated school bus pullout on a state highway. A designated school bus pullout must meet the following requirements:~~

~~(a) The pullout must be located on a roadway separated by a physical barrier, such as a guardrail, raised median, drainage ditch, or irrigation ditch.~~

~~(b) The separate roadway must be designed, constructed, and signed specifically for use by school buses, with sufficient space for safe ingress and egress from the main traveled way.~~

~~(c) The pullout must be approved by the local affected school district, by a resolution of the district trustees, and by the district superintendent as a mandatory school bus stop for receiving and discharging school children.~~

~~(5) When a school bus route includes a bus stop that requires a school child to cross a roadway, the school bus must be equipped with an extended stop arm that partially obstructs the roadway. A school child may not cross a roadway to enter or exit from a school bus unless the roadway has been partially obstructed by the extended stop arm.~~

~~(a) The extended stop arm must be equipped with additional flashing red lights as specified in 61-9-402 and must be capable of extending a distance of at least 54 inches from the school bus at a height of not less than 36 inches.~~

~~(b) The board of trustees shall approve each school bus stop that requires a school child to cross a roadway.~~

(c) *A school bus that experiences a mechanical problem or an emergency that requires the school bus to stop at a nondesignated bus stop is not subject to the requirements of this subsection (5).*

~~(5)~~(6) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

~~(6)~~(7) The driver of a motor vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

~~(7)~~(8) (a) A person who observes a violation of this section ~~may~~ *may* prepare a written, in addition to an oral, report indicating that a violation has occurred. The report may contain information concerning the violation, including:

- (i) the time and approximate location at which the violation occurred;
- (ii) the license plate number and color of the motor vehicle involved in the violation;
- (iii) identification of the motor vehicle as a passenger car, truck, bus, motorcycle, or other type of motor vehicle; ~~and~~ *and*
- (iv) a description of the person operating the motor vehicle when the violation occurred.

(b) A report under subsection ~~(7)~~(a) (8)(a) constitutes particularized suspicion under 46-5-401(1) that an operator of the vehicle committed a violation of this section.

(c) *A person who observes a violation of this section may file a written or oral complaint with the county sheriff's office. At the sheriff's discretion, the report may be transferred to the highway patrol or city police department. The report must be investigated by a peace officer, and the investigating officer shall contact the reporting party within 30 days to provide an update on the status or outcome of the investigation.*

~~(8)~~(9) (a) Violation of subsection (1)(a) is punishable upon conviction by a fine of not more than \$500.

(b) *Violation of subsection (1)(b) is a misdemeanor and is punishable on conviction by a fine of not more than \$1,000, by imprisonment for not more than 6 months, or both.*

(c) *It is a violation of subsection (5) for the driver of a motor vehicle to make contact with any portion of a stopped school bus, including an extended stop arm, or to make contact with a school child within 30 feet of a school bus. A violation under this subsection (9)(c) is a misdemeanor and is punishable on conviction by a fine of not more than \$500."*

**Section 3. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2021.

(2) [Section 2(5)] is effective July 1, 2022.

Approved May 12, 2021

## CHAPTER NO. 479

[HB 276]

AN ACT ADDING A CERTIFIED BEHAVIORAL HEALTH PEER SUPPORT SPECIALIST TO THE BOARD OF BEHAVIORAL HEALTH; INCORPORATING BEHAVIORAL HEALTH PEER SUPPORT INTO THE

BOARD OF BEHAVIORAL HEALTH DUTIES; AND AMENDING SECTIONS 2-15-1744 AND 3-22-201, MCA.

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

**Section 1.** Section 2-15-1744, MCA, is amended to read:

**“2-15-1744. Board of behavioral health.** (1) (a) The governor shall appoint, with the consent of the senate, a board of behavioral health consisting of ~~nine~~ 10 members.

(b) ~~Three~~ *Three* members must be licensed social workers, and ~~three~~ *three* must be licensed professional counselors. At least one of these members who is licensed as a social worker or professional counselor must also be licensed as a marriage and family therapist.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(d) Two members must be licensed addiction counselors.

(e) *One member must be a certified behavioral health peer support specialist.*

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

(3) Members shall serve staggered 4-year terms.”

**Section 2.** Section 37-22-201, MCA, is amended to read:

**“37-22-201. Duties of board.** The board:

(1) shall recommend prosecutions for violations of 37-22-411, 37-23-311, and Title 37, ~~chapter 35, and Title 37, chapter 37~~ *chapters 35, 37, and 38*, to the attorney general or the appropriate county attorney, or both;

(2) shall meet at least once every 3 months to perform the duties described in Title 37, chapters 1, 23, 35, ~~and 37, and 38~~, and this chapter. The board may, once a year by a consensus of board members, determine that there is no necessity for a board meeting.

(3) shall adopt rules that set professional, practice, and ethical standards for social workers, marriage and family therapists, addiction counselors, and professional counselors, and *behavioral health peer support specialists* and other rules as may be reasonably necessary for the administration of *Title 37, chapters 23, 35, and 37, and 38*, and this chapter; and

(4) may adopt rules governing the issuance of licenses of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a license is issued.”

**Section 3. Coordination instruction.** If House Bill No. 477 and [this act] are passed and approved and if both contain a section that amends 2-15-1744, then the sections amending 2-15-1744 are void and 2-15-1744 must be amended as follows:

**“2-15-1744. Board of behavioral health.** (1) (a) The governor shall appoint, with the consent of the senate, a board of behavioral health consisting of ~~nine~~ 11 members.

(b) ~~Three~~ *Three* members must be licensed social workers, and ~~three~~ *three* must be licensed professional counselors. ~~At least one of these members who is licensed as a social worker or professional counselor must also be licensed as a marriage and family therapist.~~

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(d) Two members must be licensed addiction counselors.

(e) *One member must be a certified behavioral peer support specialist.*

(f) *One member must be a licensed marriage and family therapist.*

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

(3) Members shall serve staggered 4-year terms.”

Approved May 12, 2021

## CHAPTER NO. 480

[HB 279]

AN ACT REVISING LAWS RELATED TO THE TAX CREDIT SCHOLARSHIP PROGRAM AND THE INNOVATIVE EDUCATIONAL PROGRAM; REMOVING THE ASSESSMENT REQUIREMENTS FOR QUALIFIED EDUCATION PROVIDERS; REVISING LIMITS ON SCHOLARSHIP AMOUNTS; ALLOWING TAX CREDITS EARNED UNDER THE PROGRAMS TO BE CARRIED FORWARD; REVISING THE TAX CREDIT LIMIT AND THE AGGREGATE LIMIT OF CREDITS UNDER THE PROGRAMS; REVISING THE PREAPPROVAL PROCESS FOR THE TAX CREDIT SCHOLARSHIP PROGRAM; STREAMLINING THE DONATION PROCESS FOR THE INNOVATIVE EDUCATION PROGRAM; EXTENDING THE TERMINATION DATE FOR THE TAX CREDIT SCHOLARSHIP PROGRAM AND THE INNOVATIVE EDUCATIONAL PROGRAM; AMENDING SECTIONS 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110, 15-30-3111, AND 15-30-3113, MCA; AMENDING SECTION 33, CHAPTER 457, LAWS OF 2015; REPEALING SECTIONS 20-9-901, 20-9-902, 20-9-903, 20-9-904, 20-9-905, AND 20-9-906, MCA; REPEALING SECTIONS 24, 25, 26, AND 27, CHAPTER 457, LAWS OF 2015; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES.

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

**Section 1.** Section 15-30-3101, MCA, is amended to read:

**“15-30-3101. (Temporary) Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of student scholarship organizations is to provide parental and student choice in education with private contributions donations through tax replacement programs. ~~The tax credit for taxpayer donations under this part must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)~~”

**Section 2.** Section 15-30-3102, MCA, is amended to read:

**“15-30-3102. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) “Department” means the department of revenue provided for in 2-15-1301.

(2) “Donation” means a gift of cash.

(2)(3) “Eligible student” means a student who is a Montana resident and who is 5 years of age or older on or before September 10 of the year of attendance and has not yet reached 19 years of age.

(3) ~~“Geographic region” has the meaning provided in 20-9-903.~~

(4) ~~“Large district” has the meaning provided in 20-9-903.~~

(4) “Innovative educational program” includes any of the following:

(a) *transformational learning as defined in 20-7-1602;*

(b) *advanced opportunity as defined in 20-7-1503;*

(c) *any program, service, instructional methodology, or adaptive equipment used to expand opportunity for a child with a disability as defined in 20-7-401;*

(d) *any courses provided through work-based learning partnerships or for postsecondary credit or career certification; and*

(e) *technology enhancements, including but not limited to any expenditure incurred for purposes specified in 20-9-533.*

(5) "Partnership" has the meaning provided in 15-30-2101.

(6) "Pass-through entity" has the meaning provided in 15-30-2101.

(7) "Qualified education provider" means an education provider that:

(a) is not a public school;

(b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or national accreditation organization; or

(ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing at the time of enrollment that the provider is not accredited and is not seeking accreditation;

(c) is not a home school as referred to in 20-5-102(2)(e);

~~(d) administers a nationally recognized standardized assessment test or criterion-referenced test and:~~

~~(i) makes the results available to the child's parents or legal guardian; and~~

~~(ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a publicly accessible private website or provides the composite results of the test to the office of public instruction for posting on its website;~~

~~(e)(d)~~ satisfies the health and safety requirements prescribed by law for private schools in this state; and

~~(f)(e)~~ qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.

(8) "Small business corporation" has the meaning provided in 15-30-3301.

(9) "Student scholarship organization" means a charitable organization in this state that:

(a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3);

(b) allocates not less than 90% of its annual revenue *from donations eligible for the tax credit under 15-30-3111* for scholarships to allow students to enroll with any qualified education provider; and

(c) provides educational scholarships to eligible students without limiting student access to only one education provider.

(10) "Taxpayer" has the meaning provided in 15-30-2101. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)

**Section 3.** Section 15-30-3103, MCA, is amended to read:

**"15-30-3103. (Temporary) Requirements for student scholarship organizations.** (1) A student scholarship organization:

(a) shall obligate at least 90% of its annual revenue *from donations eligible for the tax credit under 15-30-3111* for scholarships. For the purpose of this calculation:

(i) the cost of the annual fiscal review provided for in 15-30-3105(1)(b) may be paid out of the total ~~contributions~~ *donations* before calculation of the 90% minimum obligation amount; and

(ii) all ~~contributions~~ *donations* subject to the 90% minimum obligation amount that are received in 1 calendar year must be paid out in scholarships within the 3 calendar years following the ~~contribution~~ *donation*.

(b) may not restrict or reserve scholarships for use at a particular education provider or any particular type of education provider and shall

allow an eligible student to enroll with any qualified education provider of the parents' or legal guardian's choice;

(c) shall provide scholarships to eligible students to attend instruction offered by a qualified education provider;

(d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the per-pupil average of total public school expenditures calculated in 20-9-570;

~~(e) shall ensure that the organization's average scholarship for an academic year does not exceed 30% of the per-pupil average of total public school expenditures calculated in 20-9-570;~~

~~(f)(e)~~ shall maintain separate accounts for scholarship funds and operating funds;

~~(g)(f)~~ may transfer funds to another student scholarship organization;

~~(h)(g)~~ shall maintain an application process under which scholarship applications are accepted, reviewed, approved, and denied; and

~~(i)(h)~~ shall comply with payment and reporting requirements in accordance with 15-30-3104 and 15-30-3105.

(2) An organization that fails to satisfy the conditions of this section is subject to termination as provided in 15-30-3113. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)"

**Section 4.** Section 15-30-3104, MCA, is amended to read:

**"15-30-3104. (Temporary) Tuition payment limitation.** (1) A student scholarship organization shall deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the parents or legal guardian that the payment was received.

(2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from a student scholarship organization for an eligible student if the total amount of the awards exceeds 50% of the per-pupil average of total public school expenditures calculated in 20-9-570. This limitation applies to each eligible student of a parent or legal guardian. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)"

**Section 5.** Section 15-30-3106, MCA, is amended to read:

**"15-30-3106. (Temporary) Student scholarship organizations -- listing on website.** (1) The department shall maintain on its website a hyperlink to a current list of all:

(a)(1) student scholarship organizations that have provided notice pursuant to 15-30-3105(1)(a); and

(b)(2) qualified education providers that accepted scholarship funds from a student scholarship organization.

(2) ~~The list must include:~~

~~(a) a statistical compilation of the information received from the student scholarship organizations; and~~

~~(b) a hyperlink to the qualified education provider's overall testing scores contained on a publicly accessible private website or to the office of public instruction's website pursuant to 15-30-3102(7)(d)(ii). (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)"~~

**Section 6.** Section 15-30-3110, MCA, is amended to read:

**"15-30-3110. (Temporary) Credit for providing supplemental funding to public schools -- innovative educational program.** (1) Subject to subsection (5) (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to ~~the educational improvement account provided for in 20-9-905~~ a school district for the purpose

of providing supplemental funding to ~~public schools~~ *the school district* for innovative educational programs and technology deficiencies. ~~The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b).~~ The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ *\$150*. *A district shall deposit a donation made for an innovative educational program into the district's miscellaneous programs fund and shall limit the expenditure of the donation to expenditures for innovative educational programs of the district.*

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability. *There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is ~~\$3~~ *\$1 million per year beginning in tax year 2016 2022 and \$2 million per year in tax year 2023 and subsequent tax years except as provided in this subsection (4)(a).*

(ii) ~~Beginning in 2017, by August 1 2023, by December 31~~ of each year, the department shall determine if ~~\$3 million or the 80% of the~~ aggregate limit provided for in subsection ~~(5)(a)(iii) (4)(a)(iii)~~ in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by ~~10%~~ *20%* for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii) (4)(a)(ii).~~

~~(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.~~

*(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made regardless of whether the full credit is claimed in that tax year or carried forward.*

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

- (a) claiming a credit under this section instead of a deduction; or
- (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6) After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides~~

taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation:

(a) *On receiving a donation under this part, a school district shall seek preapproval, in a manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).*

(b) *On preapproval by the department, a school district shall issue a receipt, in a form prescribed by the department, to each contributing taxpayer indicating the value of the donation received and preapproval of the tax credit.*

(c) *A taxpayer shall provide a copy of the receipt when claiming the tax credit. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)*

**Section 7.** Section 15-30-3110, MCA, is amended to read:

**“15-30-3110. (Temporary) Credit for providing supplemental funding to public schools – innovative educational program.** (1) Subject to subsection ~~(5)~~ (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account provided for in 20-9-905 for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b). The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ \$200,000.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ (4)(a)(iii) in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ (4)(a)(ii).

(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution

to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation. (Terminates December 31, ~~2023~~ ~~2029~~ ~~--sec. 33, Ch. 457, L. 2015.~~)

**Section 8.** Section 15-30-3110, MCA, is amended to read:

**“15-30-3110. (Temporary) Credit for providing supplemental funding to public schools – innovative educational program.** (1) Subject to subsection ~~(5)~~ ~~(4)~~, a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account provided for in 20-9-905 for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b). The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ ~~\$200,000~~.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ ~~(4)(a)(iii)~~ in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ ~~(4)(a)(ii)~~.

(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution

to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation. (Terminates December 31, ~~2023~~ ~~2029~~ ~~--sec. 33, Ch. 457, L. 2015.~~)

**Section 9.** Section 15-30-3110, MCA, is amended to read:

**“15-30-3110. (Temporary) Credit for providing supplemental funding to public schools – innovative educational program.** (1) Subject to subsection ~~(5)~~ ~~(4)~~, a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account provided for in 20-9-905 for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b). The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ ~~\$200,000~~.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ ~~(4)(a)(iii)~~ in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ ~~(4)(a)(ii)~~.

(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution

to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation. (Terminates December 31, ~~2023~~ ~~2029~~ ~~--sec. 33, Ch. 457, L. 2015.~~)”

**Section 10.** Section 15-30-3110, MCA, is amended to read:

**“15-30-3110. (Temporary) Credit for providing supplemental funding to public schools -- innovative educational program.** (1) Subject to subsection ~~(5)~~ ~~(4)~~, a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account provided for in 20-9-905 for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b). The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ ~~\$200,000~~.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity’s income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary’s income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer’s income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer’s accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ ~~(4)(a)(iii)~~ in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ ~~(4)(a)(ii)~~.

(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer’s return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution

to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation. (Terminates December 31, ~~2023~~ ~~2029~~ ~~--sec. 33, Ch. 457, L. 2015.~~)”

**Section 11.** Section 15-30-3110, MCA, is amended to read:

**“15-30-3110. (Temporary) Credit for providing supplemental funding to public schools – innovative educational program.** (1) Subject to subsection ~~(5)~~ ~~(4)~~, a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account provided for in 20-9-905 for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b). The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ ~~\$200,000~~.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity’s income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary’s income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer’s income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer’s accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ ~~(4)(a)(iii)~~ in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ ~~(4)(a)(ii)~~.

(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer’s return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution

to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation. (Terminates December 31, ~~2023~~ *2029* ~~--sec. 33, Ch. 457, L. 2015.~~)”

**Section 12.** Section 15-30-3111, MCA, is amended to read:

**“15-30-3111. (Temporary) Qualified education tax credit for contributions *donations* to student scholarship organizations.**

(1) Subject to subsection ~~(5)~~ *(4)*, a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate ~~contributions~~ *donations* to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ *\$150*.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity’s income or loss.

(b) A ~~contribution~~ *donation* by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary’s income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer’s income tax liability. *There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer’s accounting method.*

~~(4)~~ *There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer’s accounting method.*

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is ~~\$3~~ *\$1* million *per year* ~~beginning~~ in tax year ~~2016~~ *2022* ~~and \$2 million per year in tax year 2023 and subsequent tax years except as provided in this subsection (4)(a).~~

(ii) ~~Beginning in 2017, by August 1 2023, by December 31 of each year,~~ the department shall determine if ~~\$3 million or the 80% of the~~ aggregate limit provided for in subsection ~~(5)(a)(iii)~~ *(4)(a)(iii)* in tax credits was preapproved by the department. If this condition is satisfied, the aggregate ~~amount~~ *limit* of tax credits allowed must be increased by ~~10%~~ *20%* for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the ~~base~~ aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ *(4)(a)(ii)*.

(b) ~~The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer’s return will be processed without regard to the credit.~~

*(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made regardless of whether the full credit is claimed in that tax year or carried forward.*

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6) The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution.~~

*(a) On receiving a donation under this part, a student scholarship organization shall seek preapproval, in a manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).*

*(b) On preapproval by the department, a student scholarship organization shall issue a receipt, in a form prescribed by the department, to each contributing taxpayer indicating the value of the donation received and preapproval of the tax credit.*

*(c) A taxpayer shall provide a copy of the receipt when claiming the tax credit. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)*

**Section 13.** Section 15-30-3111, MCA, is amended to read:

**“15-30-3111. (Temporary) Qualified education tax credit for contributions to student scholarship organizations.** (1) Subject to subsection ~~(5)~~ (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ \$200,000.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity’s income or loss.

(b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary’s income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer’s income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer’s accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ (4)(a)(iii) in tax credits was preapproved by the department. If this

condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ ~~(4)(a)(ii)~~.

(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)”

**Section 14.** Section 15-30-3111, MCA, is amended to read:

**“15-30-3111. (Temporary) Qualified education tax credit for contributions to student scholarship organizations.** (1) Subject to subsection ~~(5)~~ ~~(4)~~, a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150 \$200,000.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

~~(4)~~ ~~There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ ~~(4)(a)(iii)~~ in tax credits was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ (4)(a)(ii).

(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution. (Terminates December 31, ~~2023~~ 2029 --sec. 33, Ch. 457, L. 2015.)

**Section 15.** Section 15-30-3111, MCA, is amended to read:

**"15-30-3111. (Temporary) Qualified education tax credit for contributions to student scholarship organizations.** (1) Subject to subsection ~~(5)~~ (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~ \$200,000.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

~~(4)~~ There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ (4)(a)(iii) in tax credits was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years

until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ ~~(4)(a)(ii)~~.

(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution. (Terminates December 31, 2023 2029 --sec. 33; Ch. 457, L. 2015.)

**Section 16.** Section 15-30-3111, MCA, is amended to read:

**"15-30-3111. (Temporary) Qualified education tax credit for contributions to student scholarship organizations.** (1) Subject to subsection ~~(5)~~ ~~(4)~~, a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150 \$200,000.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ ~~(4)(a)(iii)~~ in tax credits was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ ~~(4)(a)(ii)~~.

(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

~~(7)(6)~~ The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)”

**Section 17.** Section 15-30-3111, MCA, is amended to read:

**“15-30-3111. (Temporary) Qualified education tax credit for contributions to student scholarship organizations.** (1) Subject to subsection ~~(5)~~ (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150 \$200,000.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability *but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year*

~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection ~~(5)(a)(iii)~~ (4)(a)(iii) in tax credits was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection ~~(5)(a)(ii)~~ (4)(a)(ii).

(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising

taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

(6)(5) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

- (a) claiming a credit under this section instead of a deduction; or
- (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(7)(6) The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)"

**Section 18.** Section 15-30-3113, MCA, is amended to read:

**"15-30-3113. (Temporary) Review determination – termination – confidentiality.** (1) Subject to subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to determining whether a student scholarship organization is in compliance with 15-30-3102, 15-30-3103, and 15-30-3105.

(2) If a student scholarship organization is not in compliance, the department shall provide to the organization written notice of the specific failures and the organization has 30 days from the date of the notice to correct deficiencies. If the organization fails to correct all deficiencies, the department shall provide a final written notice of the failure to the organization. The organization may appeal the department's determination of failure to comply according to the uniform dispute review procedure in 15-1-211 within 30 days of the date of the notice.

(3) (a) If a student scholarship organization does not seek review under 15-1-211 or if the dispute is not resolved, the department shall issue a final department decision.

(b) The final department decision for a student scholarship organization must provide that the student scholarship organization:

- (i) will be removed from the list of eligible student scholarship organizations provided in 15-30-3106 and notified of the removal; and
- (ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list cease all operations as a student scholarship organization and transfer all scholarship account funds to a properly operating student scholarship organization.

(4) A student scholarship organization that receives a final department decision may seek review of the decision from the state tax appeal board pursuant to 15-2-302.

(5) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303.

(6) If a student scholarship organization files an appeal pursuant to this section, the organization may continue to operate until the decision of the court is final.

(7) The identity of donors who make donations to ~~the educational improvement account provided for in 20-9-905 school districts to support innovative educational programs~~ or donations to a student scholarship organization is confidential tax information that is subject to the provisions of 15-30-2618. (Terminates December 31, 2023 2029 --sec. 33, Ch. 457, L. 2015.)"

**Section 19. Repealer.** The following sections of the Montana Code Annotated are repealed:

20-9-901. (Temporary) Purpose.

20-9-902. (Temporary) Definitions.

20-9-903. (Temporary) Establishment of geographic regions and large districts -- innovative educational program.

20-9-904. (Temporary) Distribution of supplemental revenue to public schools -- innovative educational program.

20-9-905. (Temporary) Educational improvement account -- revenue allocated -- appropriations from account.

20-9-906. (Temporary) Rulemaking.

**Section 20.** Section 33, Chapter 457, Laws of 2015, is amended to read:

**“Section 33. Termination.** [This act] terminates December 31, ~~2023~~ *2026 2029.*”

**Section 21. Repealer.** Sections 24, 25, 26, and 27, Chapter 457, Laws of 2015, are repealed.

**Section 22. 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 23. Effective date – applicability.** (1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025.

**Section 24. Termination.** (1) [Sections 7 and 13] terminate December 31, 2022.

(2) [Sections 8 and 14] terminate December 31, 2023.

(3) [Sections 9 and 15] terminate December 31, 2024.

(4) [Sections 10 and 16] terminate December 31, 2025.

(5) [Section 25] terminates January 1, 2025.

(6) [Sections 1 through 6 and 11, 12, 17, and 18] terminate December 31, 2029.

**Section 25. Contingent termination – legislative intent – specific findings – report to legislative finance committee.** (1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Sections 7 and 13] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Sections 8 and 14] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Sections 9 and 15] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Sections 10 and 16] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of [this act] may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of [this act] would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5).

Approved May 12, 2021

## CHAPTER NO. 481

[SB 39]

AN ACT REVISING LAWS RELATED TO SEXUAL OFFENDER EVALUATIONS AND TREATMENT; PROVIDING THAT THE BOARD OF BEHAVIORAL HEALTH AND CERTAIN OTHER BOARDS JOINTLY ESTABLISH AND MAINTAIN STANDARDS AND GUIDELINES FOR EVIDENCE-BASED ASSESSMENT, EVALUATION, TREATMENT, AND BEHAVIORAL MONITORING OF SEXUAL OFFENDERS; PROVIDING FOR A LICENSE ENDORSEMENT FOR CERTAIN PROFESSIONALS WHO

CONDUCT PSYCHOSEXUAL EVALUATIONS OF SEXUAL OFFENDERS; REVISING QUALIFICATIONS FOR SEXUAL OFFENDER EVALUATORS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-111 AND 46-23-509, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Definition – joint duties of boards – sexual offender evaluator license endorsement – rulemaking.** (1) As used in this section, “boards” means the following boards jointly:

- (a) board of behavioral health as established in 2-15-1744;
- (b) board of medical examiners as established in 2-15-1731;
- (c) board of nursing as established in 2-15-1734; and
- (d) board of psychologists as established in 2-15-1741.

(2) The boards shall:

(a) jointly establish, develop rules, and maintain standards, consistent with appropriate national standards for evaluation and treatment of sexual offenders, and guidelines for evidence-based assessment, evaluation, treatment, and behavioral monitoring of sexual offenders, including the transition into community-based treatment from a prison setting;

(b) create a subcommittee to draft requirements for sexual offender evaluators. The subcommittee must include one member of each board and two licensees of the boards listed in subsection (1) who have been engaged in the practice of evaluating sexual offenders during the last 4 years.

(c) require sexual offender evaluators to use the following levels of risk designations for a sexual offender:

- (i) level 1, the risk of a repeat sexual offense is low;
- (ii) level 2, the risk of a repeat sexual offense is moderate; or
- (iii) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator; and

(d) using recommendations from the subcommittee, set and enforce educational and experiential requirements for licensees of each of the boards to obtain a license endorsement as a sexual offender evaluator. A person may not perform sexual offender evaluations for purposes of this section without first obtaining a license endorsement.

(3) The requirements set pursuant to subsection (2)(d) must include that an evaluator:

(a) is a professional licensed in Montana or in another state as:

- (i) a physician;
- (ii) an advanced practice registered nurse;
- (iii) a clinical psychologist;
- (iv) a clinical social worker;
- (v) a clinical professional counselor; or
- (vi) a marriage and family therapist;

(b) has 2,000 documented hours of supervised experience in the evaluation and treatment of sexual offenders, at least 400 hours of which are face-to-face evaluations of sexual offenders or therapy sessions with sexual offenders. The provisions of this subsection (3)(b) do not apply when an evaluator is renewing the endorsement;

(c) has completed at least 2 sexual offender evaluations under supervision;

(d) is a full or clinical member of at least one relevant national professional organization that has ethics of practice for sexual offender assessment and treatment; and

(e) must renew the license endorsement concurrent with the evaluator's professional license.

**Section 2.** Section 46-18-111, MCA, is amended to read:

**"46-18-111. Presentence investigation – when required – definition.** (1) (a) (i) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, except as provided in subsection (1)(d), the district court may request and direct the probation and parole officer to make a presentence investigation and report unless an investigation and report has been provided to the court prior to the plea or the verdict or finding of guilty.

(ii) Unless additional information is required under subsection (1)(b), (1)(c), (1)(d), or (1)(e) or unless more time is required to allow for victim input, a preliminary or final presentence investigation and report, if requested, must be available to the court within 30 business days of the plea or the verdict or finding of guilty.

(iii) If a presentence investigation report has been requested, the district court shall consider the presentence investigation report prior to sentencing.

(b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b) or (2)(c), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-218 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 court shall order a psychosexual evaluation of the defendant *that includes unless the defendant is sentenced under 46-18-219. The evaluation must include:*

(A) 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;~~

(B) *an identification of the level of risk the defendant presents to the community using the standards established in [section 1]; and*

(C) *the defendant's needs.*

(ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and who has ~~credentials acceptable to the department of labor and industry and the court~~ *a license endorsement as provided for in [section 1].* 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.

(iii) All costs related to the evaluation, including an evaluation ordered by the court as allowed in subsection (1)(b)(ii), must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation, including an evaluation ordered by the court as allowed in subsection (1)(b)(ii), 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. The district court may order subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the evaluation.

(c) (i) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may include a mental health 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.

(ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, *licensed clinical*

*social worker, licensed clinical professional counselor, licensed marriage and family therapist, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.*

(iii) 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.

(d) If the defendant is convicted of a violent offense, as defined in 46-23-502, or if the defendant is convicted of a crime for which a victim or entity may be entitled to restitution, and the amount of restitution is not contained in a plea agreement, the court shall order a presentence investigation.

(e) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation 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 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).

(4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:

(a) a probation and parole officer who is employed by the department of corrections pursuant to 46-23-1002; or

(b) an employee of the department of corrections who has received specific training or who possesses specific expertise to make a presentence investigation and report but who is not required to be licensed as a probation and parole officer by the public safety officer standards and training council created in 2-15-2029."

**Section 3.** Section 46-23-509, MCA, is amended to read:

**"46-23-509. Psychosexual evaluations and sexual offender designations -- rulemaking authority.** (1) ~~The department shall adopt rules for the qualification of sexual offender evaluators who conduct psychosexual evaluations of sexual offenders and sexually violent predators and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.~~

(2) ~~Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator who has a license endorsement as provided for in [section 1] shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:~~

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3)(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4)(3) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6)(5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5)(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6)(5) If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry *has a license endorsement as provided for in [section 1]*. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(7)(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(8)(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender with notice of the petition and notice of the hearing."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

**Section 5. Effective date.** [This act] is effective January 1, 2022.

Approved May 12, 2021

## CHAPTER NO. 482

[SB 47]

AN ACT REVISING LAWS RELATED TO SEXUAL OFFENDER EVALUATIONS AND TREATMENT; PROVIDING THAT THE BOARD OF BEHAVIORAL HEALTH AND CERTAIN OTHER BOARDS JOINTLY ESTABLISH AND MAINTAIN STANDARDS AND GUIDELINES FOR EVIDENCE-BASED ASSESSMENT, EVALUATION, TREATMENT, AND BEHAVIORAL MONITORING OF SEXUAL OFFENDERS; PROVIDING FOR A LICENSE ENDORSEMENT FOR CERTAIN PROFESSIONALS WHO CONDUCT PSYCHOSEXUAL EVALUATIONS OF SEXUAL OFFENDERS; REVISING QUALIFICATIONS FOR SEXUAL OFFENDER EVALUATORS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-111 AND 46-23-509, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Commitments to department – report to sentencing court – data.** (1) If the department does not honor a placement recommendation made by a district court judge when the judge sentences an offender pursuant to 46-18-201(3)(a)(iv), (3)(a)(vi), or (3)(a)(vii) and includes a placement recommendation, the department shall provide a rationale for the placement and written notice to the sentencing court within 40 days after the placement decision.

(2) The department shall collect and analyze data on:

(a) court placement recommendations and department placement decisions for offenders sentenced pursuant to 46-18-201(3)(a)(iv), (3)(a)(vi), or (3)(a)(vii); and

(b) the number and type of new criminal offenses committed by offenders under the department's supervision.

(3) (a) Beginning September 1, 2022, the department shall collect data and report no later than September 1 of each year to the law and justice interim committee and the criminal justice oversight council on offenders who were under the department's supervision during the previous fiscal year and were:

(i) convicted of a new felony offense; or

(ii) revoked for a violation of the terms and conditions of a suspended or deferred sentence and the violation:

(A) is a compliance violation as defined in 46-18-203; or

(B) is not a compliance violation as defined in 46-18-203.

(b) The report must include the offenses or violations that triggered the report.

**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 May 12, 2021

**CHAPTER NO. 483**

[SB 51]

AN ACT EXEMPTING CERTAIN FIBER OPTIC OR COAXIAL CABLE FROM PROPERTY TAXATION; AMENDING SECTIONS 15-6-135, 15-6-156, AND 15-6-219, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the continuing prosperity of Montana relies upon its ability to embrace and adapt to accommodate modern economic and technological trends; and

WHEREAS, greater broadband accessibility and affordability is critical to any competitive economy of the 21st century; and

WHEREAS, this act ensures Montana's continuing prosperity by providing accessible and affordable broadband through incisive tax abatements.

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

**Section 1.** Section 15-6-135, MCA, is amended to read:

**"15-6-135. Class five property -- description -- taxable percentage.**

(1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control and carbon capture equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of ethanol-blended gasoline during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities;

(g) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control and carbon capture equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment certified as provided in subsections (2)(b) and (2)(c) and designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. This includes machinery, devices, or equipment used to capture carbon dioxide or other greenhouse gases. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and

definitions necessary to identify air and water pollution control and carbon capture equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control and carbon capture equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control and carbon capture equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) To qualify for the exemption under subsection (5)(b)(i), the air and water pollution control and carbon capture equipment must be placed into service after January 1, 2014, for the purposes of environmental benefit or to comply with state or federal pollution control regulations. If the air or water pollution control and carbon capture equipment enhances the performance of existing air and water pollution control and carbon capture equipment, only the market value of the enhancement is subject to the exemption under subsection (5)(b)(i).

(e) Except as provided in subsection (2)(d), equipment that does not qualify for the exemption under subsection (5)(b)(i) includes but is not limited to equipment placed into service to maintain, replace, or repair equipment installed on or before January 1, 2014.

(f) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) (a) Except as provided in subsection (5)(b) (5)(b), class five property is taxed at 3% of its market value.

(b) (i) Air and water pollution control and carbon capture equipment placed in service after January 1, 2014, and that satisfies the criteria in subsection (2)(d) is exempt from taxation for a period of 10 years from the date of certification, after which the property is assessed at 100% of its taxable value.

(ii) (A) *Except as provided in subsection (5)(b)(ii)(B), fiber optic or coaxial cable, as defined in 15-6-156, installed and placed in service on or after [the effective date of this act] is exempt from taxation for a period of 5 years starting from the date the fiber optic or coaxial cable was placed in service, after which the property exemption is phased out at a rate of 20% a year, with the property being assessed at 100% of its taxable value after a 10-year period. In order to maintain the exemption, the owner of fiber optic or coaxial cable must reinvest the tax savings from the exemption by installing and placing in service new fiber optic or coaxial cable in Montana within 2 years from the date the owner first claimed the exemption provided for in this subsection (5)(b)(ii) without charging those costs to the consumer. The cost of installing or placing into service fiber optic or coaxial cable with the reinvested tax savings without charging those costs to the consumer must be equal to or greater than the value of the tax savings received from the tax incentive.*

(B) *Fiber optic or coaxial cable installed using federal funds received pursuant to section 9901 of the American Rescue Plan Act is not eligible for exemption from taxation under this section.*

(C) *An entity that claims a tax exemption under this subsection (5)(b)(ii) shall maintain adequate books and records demonstrating the investment the owner made when installing and placing in service fiber optic or coaxial cable in Montana. The property owners must make those records available to the department for inspection upon request.*

(6) (a) *The property taxes exempted from taxation by subsection (5)(b)(ii) are subject to termination or recapture if the department determines that the owner failed to install and place in service new coaxial or fiber cable in Montana as provided in subsection (5)(b)(ii), or otherwise violates the provisions of this section.*

(b) *Upon notice from the department that the owner's exemption has terminated, any local governing body may recapture taxes previously exempted in that jurisdiction, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any tax year in which an exemption under the provisions of subsection (5)(b)(ii) was improper. Any recapture must occur within 10 years after the end of the calendar year in which the exemption was first claimed.*

(c) *The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."*

**Section 2.** 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)(h), class thirteen property includes:

(a) electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage 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 42 U.S.C. 16451;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157, owned or operated by any electrical energy producer;

(d) allocations of centrally assessed telecommunications services companies; and

(e) dedicated communications infrastructure described in 15-6-162(5) for which construction commenced after June 30, 2027, or for which the 15-year period provided for in 15-6-162(5)(c) has expired.

(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;

(g) generation facilities that are exempt under 15-6-225; and

(h) qualified data centers classified under 15-6-162.

(3) ~~(a)~~ For the purposes of this section, *the following definitions apply:*

(a) (i) ~~“electrical~~ *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)~~(ii) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

~~(c)~~(iii) 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.

(b) (i) *“Fiber optic or coaxial cable” means any fiber optic or coaxial cable, including all capitalized costs associated with installing and placing in service the fiber optic or coaxial cable, and other property that is normally operated when installing and placing in service fiber optic or coaxial cable to deliver digital communication and access to the internet.*

(ii) *The term does not include routers, head-end equipment, central office equipment and other electronics, or hardware or software not directly associated with installing and placing in service fiber optic or coaxial cable or the buildings used to house equipment.*

(4) ~~Class (a)~~ *Except as provided in subsection (4)(b), class thirteen property is taxed at 6% of its market value.*

(b) (i) *Except as provided in subsection (4)(b)(ii), fiber optic or coaxial cable, as defined in 15-6-156, installed and placed in service on or after [the effective date of this act] is exempt from taxation for a period of 5 years starting from the date the fiber optic or coaxial cable was placed in service, after which the property exemption is phased out at a rate of 20% a year, with the property being assessed at 100% of its taxable value after a 10-year period. In order to maintain the exemption, the owner of fiber optic or coaxial cable must reinvest the tax savings from the exemption by installing and placing in service new fiber optic or coaxial cable in Montana within 2 years from the date the owner first claimed the exemption provided for in this subsection (4)(b) without charging those costs to the consumer. The cost of installing or placing into service fiber optic or coaxial cable with the reinvested tax savings without charging those costs to the consumer must be equal to or greater than the value of the tax savings received from the tax incentive.*

(ii) *Fiber optic or coaxial cable installed using federal funds received pursuant to Section 9901 of the American Rescue Plan Act is not eligible for exemption from taxation under this section.*

(iii) *An entity that claims a tax exemption under this subsection (4)(b) shall maintain adequate books and records demonstrating the investment the owner made when installing and placing in service fiber optic or coaxial cable in Montana. The property owners must make those records available to the department for inspection upon request.*

(5) (a) *The property taxes exempted from taxation by subsection (4)(b) are subject to termination or recapture if the department determines that the owner failed to install and place in service new coaxial or fiber cable in Montana as provided in subsection (4)(b), or otherwise violates the provisions of this section.*

(b) *Upon notice from the department that the owner's exemption has terminated, any local governing body may recapture taxes previously exempted in that jurisdiction, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any tax year in which an exemption under the provisions of this section was improper. Any recapture must occur within 10 years after the end of the calendar year in which the exemption was first claimed.*

(c) *The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."*

**Section 3.** Section 15-6-219, MCA, is amended to read:

**"15-6-219. Personal and other property exemptions.** (1) The following categories of property are exempt from taxation:

- (1)(a) harness, saddlery, and other tack equipment;
- (2)(b) 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)(i) construct, repair, and maintain improvements to real property; or
  - (b)(ii) repair and maintain machinery, equipment, appliances, or other personal property;
- (3)(c) 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)(d) a bicycle or a moped, as defined in 61-8-102, used by the owner for personal transportation purposes;
- (5)(e) 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)(i) the acquired cost of the personal property is less than \$15,000;

(b)(ii) 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)(iii) the lease of the personal property is generally on an hourly, daily, weekly, semimonthly, or monthly basis;

(6)(f) 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;

(7)(g) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(8)(h) air and water pollution control and carbon capture equipment, as defined in 15-6-135, placed in service after January 1, 2014;

(9)(i) a house trailer, manufactured home, or mobile home that receives an exemption from the department based on abandonment, as provided in 15-6-242; and

(j) *fiber optic or coaxial cable, as defined in 15-6-156, installed and placed in service on or after [the effective date of this act], for a period of 5 years starting from the date placed in service as provided in 15-6-156, if the owner of fiber optic or coaxial cable reinvests the tax savings from the exemption by installing and placing in service new fiber optic or coaxial cable in Montana within 2 years from the date the owner first claimed the exemption provided for in this subsection (1)(j) without charging those costs to the consumer. The cost of installing or placing into service fiber optic or coaxial cable with the reinvested tax savings without charging those costs to the consumer must be equal to or greater than the value of the tax savings received from the tax incentive. An entity that claims a tax exemption under this subsection (1)(j) shall maintain adequate books and records demonstrating the investment the owner made when installing and placing in service fiber optic or coaxial cable in Montana. The property owners must make those records available to the department for inspection upon request.*

(10)(k) personal property used in the manufacture of ammunition components as provided in 30-20-204.

(2) (a) *The property taxes exempted from taxation by subsection (1)(j) are subject to termination or recapture if the department determines that the owner failed to install and place in service new coaxial or fiber cable in Montana as provided for in subsection (1)(j), or otherwise violates the provisions of this section.*

(b) *Upon notice from the department that the owner's exemption has terminated, any local governing body may recapture taxes previously exempted in that jurisdiction, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any tax year in which an exemption under the provisions of this section was improper. Any recapture must occur within 10 years after the end of the calendar year in which the exemption was first claimed.*

(c) *The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer. (Subsection (10) (1)(k) terminates December 31, 2024--sec. 16, Ch. 440, L. 2015.)*

**Section 4. Fiber optic or coaxial cable abatement – review and comment by local taxing jurisdictions.** The department shall establish a page on its website to enable:

(1) owners of fiber optic or coaxial cable intending to take advantage of the tax abatement provisions in 15-6-135, 15-6-156, and 15-6-219 to notify local governing bodies of the location or locations in which they intend to place in service fiber optic or coaxial cable; and

(2) local governing bodies to post comments on such projects identified by owners of fiber optic or coaxial cable as provided in subsection (1).

**Section 5. Effective date.** [This act] is effective July 1, 2021.

**Section 6. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 4].

**Section 7. Applicability.** [This act] applies to fiber optic or coaxial cable facilities placed in service on or after [the effective date of this act].

Approved May 12, 2021

## CHAPTER NO. 484

[SB 52]

AN ACT REVISING THE LODGING FACILITY USE TAX AND THE SALES TAX ON LODGING AND RENTAL CARS; ALIGNING DEFINITIONS FOR THE LODGING FACILITY USE TAX AND THE SALES TAX ON LODGING; REQUIRING REGISTRATION AND COLLECTION BY SHORT-TERM RENTAL MARKETPLACES; AMENDING SECTIONS 15-65-101, 15-65-111, 15-65-112, 15-65-113, 15-65-114, 15-65-115, 15-68-101, 15-68-502, AND 76-8-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-65-101, MCA, is amended to read:

**“15-65-101. Definitions.** For purposes of this part, the following definitions apply:

(1) ~~“Accommodation charge” means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.~~

(1) *“Accommodations” has the meaning provided in 15-68-101.*

(2) ~~(a) “Campground” means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.~~

~~(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.~~

~~(3)(2) “Council” means the tourism advisory council established in 2-15-1816.~~

(4) ~~(a) “Facility” means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.~~

~~(b) The term does not include any health care facility, as defined in 50-5-101, or any facility owned by a corporation organized under Title 35,~~

chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5)(3) "Indian tourism region" includes the area recognized as being historically associated with the seven federally recognized reservations in Montana and the Little Shell Chippewa tribe.

(6)(4) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located.

(5) "Person" has the meaning provided in 15-68-101.

(6) "Purchaser" has the meaning provided in 15-68-101.

(7) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

(8) "Resort area" means an area established pursuant to 7-6-1508.

(9) "Resort area district" has the meaning provided in 7-6-1501.

(10) "Sales price" has the meaning provided in 15-68-101.

(11) "Seller" has the meaning provided in 15-68-101.

(12) "Short-term rental marketplace" has the meaning provided in 15-68-101."

**Section 2.** Section 15-65-111, MCA, is amended to read:

**"15-65-111. Tax rate.** (1) There is imposed on the user of a facility accommodations a tax at a rate equal to 4% of the accommodation charge collected by the facility sales price paid by the purchaser.

(2) Accommodation charges do not include charges for rooms used for purposes other than lodging."

**Section 3.** Section 15-65-112, MCA, is amended to read:

**"15-65-112. Collection and reporting.** (1) The owner or operator of a facility seller of accommodations shall collect the tax imposed by 15-65-111.

(2) The owner or operator seller shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to accommodation charges for the use of the facility the sales price paid by the purchaser. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1) this section."

**Section 4.** Section 15-65-113, MCA, is amended to read:

**"15-65-113. Audits – records.** (1) The department of revenue may audit the books and records of any owner or operator seller to ensure that the proper amount of tax imposed by 15-65-111 has been collected. An audit may be done on the premises of the owner or operator of a facility seller or at any other convenient location.

(2) The department may request the owner or operator of a facility seller to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of tax.

(3) The owner or operator of a facility seller shall maintain and have available for inspection by the department books, ledgers, registers, or other

documents showing the collection of accommodation charges sales price and tax collections for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this part, the amount of tax due under any return must be determined by the department within 5 years after the return is made, and the department thereafter is barred from revising any ~~such~~ return or recomputing the tax due ~~thereon~~ after the department has determined the tax, and no proceeding in court for the collection of the tax may be instituted unless notice of any additional tax is provided within ~~such~~ the period.

(5) An application for revision may be filed with the department by an ~~owner or operator of a facility~~ a seller within 5 years from the original due date of the return.”

**Section 5.** Section 15-65-114, MCA, is amended to read:

**“15-65-114. Registration number Seller’s permit – application to department – collection by short-term rental marketplace.** (1) The owner or operator of a facility shall apply to the department of revenue for a registration number:

(2) ~~The application must be made on a form provided by the department.~~

(3) Upon completion of the application and delivery of the application to the department, the department must assign a registration number to the owner, operator, or facility, as appropriate.

(1) *Before engaging in business within the state, a seller of accommodations must obtain a seller’s permit in accordance with 15-68-401.*

(2) *A short-term rental marketplace shall register with the department of revenue and collect the tax imposed by this chapter as provided in [section 8].”*

**Section 6.** Section 15-65-115, MCA, is amended to read:

**“15-65-115. Failure to pay or file – penalty and interest – review – interest.** (1) An ~~owner or operator of a facility~~ A seller who fails to file the report as required by 15-65-112 must be assessed a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206.

(2) An ~~owner or operator of a facility~~ A seller who fails to make payment or fails to report and make payment as required by 15-65-112 must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) (a) If an ~~owner or operator of a facility~~ a seller fails to file the report required by 15-65-112 or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the ~~owner or operator~~ seller. The provisions of 15-1-211 apply to any assessment by the department. The ~~taxpayer~~ seller may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the ~~owner or operator~~ seller. Penalty and interest must be added to any deficiency assessment as provided in 15-1-216.”

**Section 7.** Section 15-68-101, MCA, is amended to read:

**“15-68-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) ~~“Accommodations” means a building or structure containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation~~ *short-term rentals or individual sleeping rooms, suites, camping spaces, or other units offered for overnight lodging periods of less than 30 days to the general public for compensation.*

(b) Accommodations includes a facility ~~include units located in property~~ represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility, *vacation home, home, apartment, timeshare, room, or rooms rented by or on behalf of the owner or seller.*

(c) The term does not include:

(i) a health care facility, as defined in 50-5-101;

(ii) any facility owned by a corporation organized under Title 35, chapter 2 or 3;

(iii) ~~a facility that is used primarily by persons under 18 years of age for camping purposes; or any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more~~

(iv) ~~rooms or spaces offered separately to the general public for nonlodging purposes, including meeting, conference, or banquet spaces.~~

~~(2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.~~

~~(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.~~

~~(3)(2) (a) "Base rental charge" means the following:~~

~~(i) charges for time of use of the rental vehicle and mileage, if applicable;~~

~~(ii) charges accepted by the renter for personal accident insurance;~~

~~(iii) charges for additional drivers or underage drivers; and and~~

~~(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.~~

~~(b) The term does not include:~~

~~(i) rental vehicle price discounts allowed and taken;~~

~~(ii)(i) rental vehicle price discounts allowed and taken;~~

~~(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;~~

~~(iii)(iii) motor fuel;~~

~~(iv)(iv) intercity rental vehicle drop charges; or~~

~~(v)(v) taxes imposed by the federal government or by state or local governments.~~

~~(4)(3) (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.~~

~~(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.~~

~~(5)(4) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.~~

~~(6) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.~~

~~(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h)(1).~~

~~(c) The term does not include:~~

~~(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;~~

~~(ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments; or~~

~~(iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.~~

~~(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.~~

~~(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.~~

~~(7)(5) (a) "Motor vehicle" means:~~

~~(i) a light vehicle as defined in 61-1-101;;~~

~~(ii) a motorcycle as defined in 61-1-101;;~~

~~(iii) a motor-driven cycle as defined in 61-1-101;;~~

~~(iv) a quadricycle as defined in 61-1-101;;~~

~~(v) a motorboat or a sailboat as defined in 23-2-502; or~~

~~(vi) an off-highway vehicle as defined in 23-2-801 that:~~

~~(i)(A) is rented for a period of not more than 30 days;~~

~~(ii)(B) is rented without a driver, pilot, or operator; and~~

~~(iii)(C) is designed to transport 15 or fewer passengers.~~

~~(b) Motor vehicle includes:~~

~~(i) a rental vehicle rented pursuant to a contract for insurance; and~~

~~(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.~~

~~(c) The term does not include farm vehicles, machinery, or equipment.~~

~~(6) "Online hosting platform" means any person that provides an online application, software, website, or system through which a seller may advertise, rent, or furnish accommodations or rental vehicles, and through which a purchaser may arrange for use of those accommodations or the use or lease of rental vehicles. Online hosting platforms include any online travel company or third-party reservation intermediary that facilitates the sale or use of accommodations or rental vehicles.~~

~~(8) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.~~

~~(9)(7) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, online hosting platform, or any other legal entity.~~

~~(10)(8) "Purchaser" means a person to whom a sale of personal property accommodations or a rental vehicle is made or to whom a service is furnished.~~

~~(11)(9) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.~~

~~(12)(10) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.~~

~~(13)~~(11) “Sale” or “selling” means the ~~transfer~~ *rental or use* of ~~property accommodations or rental vehicles~~ for consideration or the performance of a service for consideration.

~~(14)~~(12) (a) “Sales price” applies to the measure subject to ~~sales~~ *the tax under Title 15, chapter 65, and this chapter* and means the total amount ~~or paid by the purchaser in the form of~~ consideration, including cash, credit, property, and services, for which ~~personal property or sales of accommodations, rental vehicles, or services are provided~~, sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) the seller’s cost of the property sold;
- (ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) charges by the seller for any services necessary to complete the sale; ~~other than delivery and installation charges;~~
- (iv) delivery charges; *or*
- (v) installation charges;
- ~~(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and~~
- ~~(vii) credit for any trade-in.~~

(b) The amount received for charges listed in subsections ~~(14)(a)(iii)~~ (12)(a)(ii) through ~~(14)(a)(vii)~~ (12)(a)(v) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser *and the charge is not subject to subsection (12)(d)*.

~~(c) The term does not include:~~

- ~~(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;~~
- ~~(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or~~
- ~~(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.~~
- ~~(d) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.~~

~~(e) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.~~

~~(c) The term does not include:~~

- ~~(i) charges for meals, transportation, entertainment, or any other similar charges; or~~
- ~~(ii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.~~

~~(d) Unless specifically excluded, sales price includes any separate charge or fee that a purchaser must pay to facilitate the sale or rental of the accommodations or rental vehicle, including a fee or a service, commission, or other charge by an online hosting platform.~~

~~(15)~~(13) “Sales tax” and “use tax” mean the applicable tax imposed by 15-68-102.

~~(16)(14)~~ “Seller” means a person that ~~makes sales, leases, or rentals of personal property or services~~ *makes sales of accommodations or rental vehicles, including an online hosting platform.*

~~(17)(15)~~ (a) “Service” means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of ~~property accommodations or rental vehicles~~. Service includes activities performed by ~~a person for its members or shareholders~~ *an online hosting platform.*

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(16) “Short-term rental” means *any individually or collectively owned single-family house or dwelling unit or any unit or group of units in a condominium, cooperative, or timeshare, or owner-occupied residential home that is offered for a fee for 30 days or less.*

(17) “Short-term rental marketplace” means *a person that provides a platform through which a seller or the authorized agent of the seller offers a short-term rental to an occupant.*

(18) “Timeshare” means *any facility for which multiple parties or individuals own a right to use the facility, for lodging purposes, and these parties or individuals do not hold claim to ownership of the physical property.*

~~(18) “Use” or “using” includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business.”~~

**Section 8. Short-term rental marketplace registration – collection of tax.** (1) A short-term rental marketplace shall register with the department of revenue for collection, reporting, and payment of the tax provided for in Title 15, chapter 65, and this chapter on short-term rentals due from sellers on any sale facilitated by the short-term rental marketplace.

(2) A short-term rental marketplace shall collect, report, and pay taxes imposed by Title 15, chapter 65, and this chapter.

(3) The tax collected under Title 15, chapter 65, and this chapter, is on the sales price, as defined in 15-68-101.

(4) Unless approved to do otherwise by the department, a short-term rental marketplace selling accommodations at two or more short-term rentals shall file a separate return for each separate short-term rental if each separate short-term rental is in a different city, county, or tourism region.

**Section 9.** Section 15-68-502, MCA, is amended to read:

**“15-68-502. Returns – payment – authority of department.** (1) (a) Except as provided in subsection (2), on or before the last day of the month following the calendar quarter in which the transaction subject to the tax imposed by this chapter occurred, a return, on a form provided by the department, and payment of the tax for the preceding quarter must be filed with the department.

(b) Each person engaged in business within this state or using property or services within this state that are subject to tax under this chapter shall file a return.

(c) A person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(2) A person who has been issued a seasonal seller’s permit shall file a return and pay the tax on the date or dates set by the department.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

- (i) a retailer required to collect the tax; and
- (ii) a person that:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

(b) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(4) (a) A person required to collect and pay to the department the taxes imposed by this chapter shall keep records, render statements, make returns, and comply with the provisions of this chapter and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of this chapter, the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a person having knowledge or information relevant to a return;

(ii) compel the production of books, papers, records, or memoranda by the person required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(5) Pursuant to rules established by the department, returns may be computer-generated and electronically filed."

**Section 10.** Section 76-8-103, MCA, is amended to read:

**"76-8-103. Buildings for lease or rent – exemptions.** (1) A building created for lease or rent on a single tract is exempt from the provisions of this part if:

(a) the building is in conformance with applicable zoning regulations adopted pursuant to Title 76, chapter 2, parts 1 through 3, provided that the zoning contains the elements of 76-8-107; or

(b) when applicable zoning regulations are not in effect:

(i) the building was in existence or under construction before September 1, 2013;

(ii) the building ~~is a facility~~ *provides accommodations* as defined in ~~15-65-101~~ *15-68-101* that ~~is~~ *are* subject to the lodging facility use tax under Title 15, chapter 65, except for recreational camping vehicles or mobile home parks;

(iii) the building is created for lease or rent for farming or agricultural purposes;

(iv) the building is not served by water and wastewater and will not be leased or rented;

(v) the building is served by water and wastewater and the landowner records a notarized declaration with the clerk and recorder of the county in which the property is located stating that the proposed building will not be leased or rented. The declaration recorded pursuant to this subsection (1)(b)(v) runs with the land and is binding on the landowner and all subsequent landowners and successors in interest to the property. The declaration must include but is not limited to:

(A) the name and address of the landowner;

(B) a legal description of the tract upon which the proposed building will be located; and

(C) a specific description of the building on the tract of record.

(2) Any building that is exempt under subsection (1) from the provisions of this part and that is or will be served by water or wastewater must be in compliance with the provisions of 76-8-106.

(3) The exemption provided in subsection (1)(b)(i) is limited to the first three buildings created for lease or rent on a single tract.”

**Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

**Section 12. Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 15, chapter 68, and the provisions of Title 15, chapter 68, apply to [section 8].

**Section 13. 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 14. Applicability.** [This act] applies to sales made on or after October 1, 2021.

Approved May 12, 2021

## CHAPTER NO. 485

[SB 98]

AN ACT REVISING THE CIRCUMSTANCES UNDER WHICH GRIZZLY BEARS MAY BE TAKEN BY LANDOWNERS TO PROTECT PERSONS OR LIVESTOCK; PROVIDING LEGISLATIVE FINDINGS; PROVIDING FOR AN ABSOLUTE DEFENSE; AMENDING SECTION 87-6-106, 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 87-6-106, MCA, is amended to read:

**“87-6-106. Lawful taking to protect livestock or person – findings.**

(1) ~~This~~ *The legislature finds that the grizzly bear population in the state is recovered and should be removed from the federal endangered species list. The legislature also finds that the expanded grizzly bear population is moving into private property and residential areas causing increased conflict with livestock owners and presenting a human safety concern. The legislature further finds that Montana citizens have a right to protect themselves and their property and livestock from wild animals. Therefore, this chapter may not be construed to impose, by implication or otherwise, criminal liability pursuant to Montana law for the taking of wildlife protected by this title if the wildlife is attacking, killing, or threatening to kill a person or livestock. However, 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.*

(2) 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.

(3) A person who, under this section, takes wildlife protected by this title shall notify the department within 72 hours and shall surrender or arrange to surrender the wildlife to the department.

(4) *In accordance with the rights conferred on Montana citizens pursuant to Article II, sections 3 and 12, of the Montana constitution, the legislature*

*finds the act of a grizzly bear attacking, killing, or threatening to kill a person or livestock is an absolute defense against a person who takes a grizzly bear in accordance with this section being charged with a crime under Montana law.”*

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

**Section 3. Applicability.** [This act] applies to actions occurring on or after [the effective date of this act].

Approved May 12, 2021

## CHAPTER NO. 486

[SB 116]

AN ACT REVISING LAWS RELATED TO ANTLERLESS ELK TAG LICENSES; CLARIFYING DEPARTMENTAL AUTHORITY TO AWARD ELK B TAG LICENSES BY DRAWING; AUTHORIZING A DISCOUNTED PRICE FOR CERTAIN ANTLERLESS ELK B TAG LICENSES; AUTHORIZING LIMITED LANDOWNER PREFERENCE TO RECEIVE ELK B TAG LICENSES; ELIMINATING THE CLASS A-7 ANTLERLESS ELK TAG LICENSE; AMENDING SECTIONS 87-1-325, 87-2-501, AND 87-2-513, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Drawing for Class A-9 and Class B-12 antlerless elk B tag licenses – landowner preference.** (1) In the event the number of valid applications for Class A-9 resident antlerless elk B tag licenses or Class B-12 nonresident antlerless elk B tag licenses for a hunting district exceeds the quota set by the department for the district, the department shall award the permits by a drawing.

(2) Subject to the limitations of subsection (4), in a hunting district where Class A-9 and Class B-12 licenses are issued, a corresponding Class A-9 or B-12 license must be issued, on application, to persons who:

(a) own or have contracted to purchase 640 acres or more of contiguous land, at least some of which is used by elk; or

(b) own 160 acres or more of contiguous production agricultural land on which the department documented elk game damage within the last 2 years.

(3) A landowner who is eligible to receive a Class A-9 or Class B-12 license under subsection (2) may designate an immediate family member or a person employed by the landowner to apply for the license. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to apply for the Class A-9 or Class B-12 license.

(4) Subject to the management provisions provided in 87-1-321 through 87-1-325, 15% of the Class A-9 and Class B-12 licenses available each year in a hunting district must be available to landowners pursuant to subsection (2).

**Section 2.** Section 87-1-325, MCA, is amended to read:

**“87-1-325. Rulemaking – discounted antlerless elk B tag licenses.**

(1) The department and the commission shall adjust existing wildlife management rules and plans to implement 87-1-321 through 87-1-325.

(2) The department and the commission may adopt rules for determining sustainability. The commission shall consider average carrying capacity and use generally accepted animal unit factors for each species in each commission region.

(3) Any rules adopted by the department pursuant to subsection (2) must be adopted in a timely manner.

(4) *The commission may offer for sale at one-half the cost of a regularly priced license Class A-9 resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses to be used as prescribed by the commission on private lands in hunting districts where the elk population is above the sustainable population number established pursuant to 87-1-323 as determined by the department's most recent elk survey count."*

**Section 3.** Section 87-2-501, MCA, is amended to read:

**"87-2-501. Class A-3, A-4, A-5, A-6, A-7, and A-9 – resident deer, elk, and bear licenses – special Class A-7 resident and nonresident license requirements and preference – fees.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one of each of the following licenses at the prescribed cost that will entitle a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

- (a) Class A-3, deer A tag, \$16;
- (b) Class A-4, deer B tag, \$10;
- (c) Class A-5, elk tag, \$20;
- (d) Class A-6, black bear tag, \$19;
- (e) Class A-7, antlerless elk tag, \$20;
- (f)(e) Class A-9, resident antlerless elk B tag, \$20.

(2) (a) ~~The holder of a Class A-7 antlerless elk license who is 12 years of age or older is entitled to hunt antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the commission.~~

(b) Subject to the management provisions provided in 87-1-321 through 87-1-325, a person may not take more than three elk during any license year, only one of which may be antlered. A person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. ~~The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.~~

(c) ~~Subject to the management provisions provided in 87-1-321 through 87-1-325, a nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.~~

(3) ~~Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section must be issued, upon application, a Class A-7 license.~~

(4) ~~An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.~~

(5) ~~Subject to the management provisions provided in 87-1-321 through 87-1-325, 15% of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."~~

**Section 4.** Section 87-2-513, MCA, is amended to read:

**"87-2-513. Either-sex or antlerless elk license or permit for landowner who offers free public elk hunting – terms, conditions, and issuance.** (1) For wildlife management purposes, the department may issue, at no cost to a landowner who provides free public elk hunting on the landowner's property and pursuant to this section, an either-sex or antlerless elk license,

permit, or combination ~~thereof of the two~~ as required in that hunting district for the landowner or the landowner's designee to hunt on the landowner's property. A designee may be an immediate family member or an authorized full-time employee of the landowner.

(2) To be eligible for a license or permit pursuant to this section, a landowner:

(a) must own occupied elk habitat that is large enough, in the department's determination, to accommodate successful public hunting;

~~(b) may not have been issued a Class A-7 landowner license pursuant to 87-2-501(3) during the license year;~~

~~(c)~~(b) must have entered into a contractual public elk hunting access agreement with the department in accordance with subsection (7) that allows public access for free public elk hunting on the landowner's property throughout the regular hunting season; and

~~(d)~~(c) may not charge a fee or authorize a person to charge a fee for hunting access on the landowner's property.

(3) For every four members of the public allowed to hunt under the contractual public elk hunting access agreement, the department may issue one license, permit, or combination ~~thereof of the two~~ pursuant to subsection (1). The department may limit the total number of licenses and permits issued under this section.

(4) A license or permit issued pursuant to this section:

(a) is nontransferable and may not be sold or bartered; and

(b) may only be used for hunting conducted on property that is opened to public access pursuant to this section.

(5) The department may prioritize distribution of licenses or permits under subsection (1) according to the areas the department determines are most in need of management.

(6) If the department determines that a landowner or landowner's designee has not abided by the restrictions and conditions of a license or permit issued pursuant to this section, that landowner or landowner's designee is not eligible to receive another license or permit pursuant to this section during any subsequent license year.

(7) (a) A contractual public elk hunting access agreement must define the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed on the property, and other factors that the department and the landowner consider necessary for the proper management of elk on the landowner's property. The agreement must reserve the right of the landowner to deny access to the landowner's property by a public hunter selected pursuant to subsection (7)(b) for cause, including but not limited to intoxication, violation of landowner conditions for use of the property, or previous misconduct on a landowner's property.

(b) The department shall select public hunters eligible to hunt on the landowner's property through a random drawing of holders of existing licenses or permits in that hunting district."

**Section 5. 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 6. Effective date.** [This act] is effective March 1, 2022.

Approved May 12, 2021

## CHAPTER NO. 487

[SB 155]

AN ACT PROVIDING FOR NONDISCRIMINATION IN ACCESS TO ANATOMICAL GIFTS AND ORGAN TRANSPLANTATION ON THE BASIS OF DISABILITY; PROVIDING A CAUSE OF ACTION FOR ALLEGED VIOLATION OF NONDISCRIMINATION PROVISIONS; PROHIBITING INSURERS FROM DENYING COVERAGE SOLELY ON THE BASIS OF DISABILITY; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Legislative intent.** The legislature finds that:

(1) an intellectual or physical disability does not diminish a person's right to health care;

(2) the "Americans with Disabilities Act of 1990", 42 U.S.C. 12101, prohibits discrimination against persons with disabilities;

(3) life-saving organ transplants should not be denied to persons with disabilities based on assumptions that they are incapable of complying with posttransplant medical requirements or lack adequate support systems to ensure compliance with posttransplant medical requirements;

(4) although organ transplant centers must consider medical and psychosocial criteria when determining if a patient is suitable to receive an organ transplant, transplant centers that participate in medicare, medicaid, and other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs; and

(5) Montana residents in need of organ transplants are entitled to assurances that they will not encounter discrimination on the basis of a disability.

**Section 2. Definitions.** As used in [sections 1 through 4], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation or transfusion.

(2) "Auxiliary aids or services" means an aid or service that is used to provide information to a person with a cognitive, developmental, intellectual, neurological, or physical disability and is available in a format or manner that allows the person to better understand the information. An auxiliary aid or service may include:

(a) qualified interpreters or other effective methods of making aurally delivered materials available to persons with hearing impairments;

(b) qualified readers, taped texts, texts in accessible electronic format, or other effective methods of making visually delivered materials available to persons with visual impairments; and

(c) supported decisionmaking services, including:

(i) the use of a support individual to communicate information to the person with a disability, ascertain the wishes of the person, or assist the person in making decisions;

(ii) the disclosure of information to a legal guardian, authorized representative, or another individual designated by the person with a disability for that purpose, as long as the disclosure is consistent with state and federal law, including the federal Health Insurance Portability and Accountability

Act of 1996, 42 U.S.C. 1320d, et seq., and any regulations promulgated by the United States department of health and human services to implement the act;

(iii) if a person who has a disability has a court-appointed guardian or other individual responsible for making medical decisions on behalf of the person, any measures used to ensure that the person is included in decisions involving the person's health care and that medical decisions are in accordance with the person's own expressed interests; and

(iv) any other aid or service that is used to provide information in a format that is easily understandable and accessible to people with cognitive, neurological, developmental, or intellectual disabilities, including assistive communication technology.

(3) "Covered entity" means:

(a) a licensed provider of health care services, including licensed health care practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions for individuals with intellectual or developmental disabilities, and prison health centers; or

(b) an entity responsible for matching anatomical gift donors to potential recipients.

(4) "Disability" means:

(a) a physical or intellectual impairment that substantially limits one or more of a person's major life activities;

(b) a record of such an impairment; or

(c) being regarded as having such an impairment.

(5) "Organ transplant" means the transplantation or transfusion of a part of a human body into the body of another for the purpose of treating or curing a medical condition.

(6) "Qualified recipient" means a person who has a disability and meets the essential eligibility requirements for the receipt of an anatomical gift with or without any of the following:

(a) individuals or entities available to support and assist the person with an anatomical gift or transplantation;

(b) auxiliary aids or services; or

(c) reasonable modifications to the policies, practices, or procedures of a covered entity, including modifications to allow for:

(i) communication with one or more individuals or entities available to support or assist with the recipient's care and medication after surgery or transplantation; or

(ii) consideration of support networks available to the person, including family, friends, and home and community-based services, including home and community-based services funded through medicaid, medicare, another health plan in which the person is enrolled, or any program or source of funding available to the person, when determining whether the person is able to comply with posttransplant medical requirements.

**Section 3. Discrimination in organ transplantation.** (1) A covered entity may not, solely on the basis of a person's disability:

(a) consider the person ineligible to receive an anatomical gift or organ transplant;

(b) deny medical services or other services related to organ transplantation, including diagnostic services, evaluation, surgery, counseling, or postoperative treatment and services;

(c) refuse to refer the person to a transplant center or other related specialist for the purpose of being evaluated for or receiving an organ transplant;

(d) refuse to place a qualified recipient on an organ transplant waiting list;

(e) place a qualified recipient on an organ transplant waiting list at a lower priority position than the position at which the person would have been placed if the person did not have a disability; or

(f) refuse insurance coverage for any procedure associated with being evaluated for or receiving an anatomical gift or organ transplant, including posttransplantation and posttransfusion care.

(2) It is not a violation of subsection (1) for a covered entity to take a person's disability into account when making treatment or coverage recommendations or decisions, solely to the extent that the disability has been found by a physician or surgeon to be medically significant to the provision of the anatomical gift after completing an individualized evaluation of the person.

(3) If a person has the necessary support system to assist the person in complying with posttransplant medical requirements, a covered entity may not consider the person's inability to independently comply with posttransplant medical requirements to be medically significant for the purposes of subsection (2).

(4) A covered entity must make reasonable modifications to its policies, practices, or procedures to allow people with disabilities access to transplantation-related services, including diagnostic services, surgery, postoperative treatment, and counseling, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of such services.

(5) A covered entity must take steps necessary to ensure that a person with a disability is not denied medical services or other services related to organ transplantation, including diagnostic services, surgery, postoperative treatment, or counseling due to the absence of auxiliary aids or services, unless the covered entity can demonstrate that taking the steps would fundamentally alter the nature of the medical services or other services related to organ transplantation or would result in an undue burden for the covered entity.

(6) This section applies to all stages of the organ transplant process.

(7) Nothing in this section may be construed to:

(a) require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant; or

(b) affect a covered entity's obligation to comply with the requirements of Titles II and III of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008.

**Section 4. Enforcement.** (1) A person claiming to be aggrieved by a violation of any provision of [sections 1 through 4] may file a civil action for injunctive and other equitable relief against the covered entity in the district court for the county where the affected person resides or the county where the alleged violation occurred.

(2) In an action brought under [sections 1 through 4], the court may grant injunctive or other equitable relief, including:

(a) requiring auxiliary aids or services to be made available for the recipient;

(b) requiring the modification of a policy, practice, or procedure of a covered entity; or

(c) requiring facilities to be made accessible to and usable by a qualified recipient.

(3) The court shall give priority on its docket and an expedited review.

(4) Nothing in [sections 1 through 4] is intended to limit or replace other remedies available under federal or other law.

(5) [Sections 1 through 4] do not create a right to compensatory or punitive damages against a covered entity.

**Section 5. Unfair discrimination prohibited – anatomical gifts, organ transplants, and related treatment.** (1) An insurer that provides coverage for anatomical gifts, organ transplants, or related treatment and services may not:

(a) deny coverage under an insurance policy to a covered person solely on the basis of the person's disability;

(b) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under an insurance policy, solely for the purpose of avoiding the requirements of this section;

(c) penalize or otherwise reduce or limit the reimbursement of an attending provider or provide monetary or nonmonetary incentives to an attending provider to induce the provider to provide care to an insured or enrollee in a manner inconsistent with this section; or

(d) reduce or limit coverage benefits to a patient for the medical services or other services related to organ transplantation performed pursuant to this section as determined in consultation with the attending physician and patient.

(2) In the case of an insurance policy maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, any plan amendment made pursuant to a collective bargaining agreement that amends the plan solely to conform to a requirement imposed pursuant to this section may not be treated as a termination of the collective bargaining agreement.

(3) Nothing in this section may be construed to require a health insurance issuer to provide coverage for a medically inappropriate organ transplant.

**Section 6. Codification instruction.** (1) [Sections 1 through 4] are intended to be codified as a new part in Title 49, chapter 4, and the provisions of Title 49, chapter 4, apply to [sections 1 through 4].

(2) [Section 5] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 5].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved May 12, 2021

## CHAPTER NO. 488

[SB 159]

AN ACT REDUCING THE TOP INDIVIDUAL INCOME TAX RATE; AMENDING SECTION 15-30-2103, MCA; AND PROVIDING APPLICABILITY DATES, EFFECTIVE DATES, AND TERMINATION DATES.

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

**Section 1.** Section 15-30-2103, MCA, is amended to read:

**“15-30-2103. Rate of tax.** (1) There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

- (a) on the first \$2,900 of taxable income or any part of that income, 1%;
- (b) on the next \$2,200 of taxable income or any part of that income, 2%;
- (c) on the next \$2,700 of taxable income or any part of that income, 3%;
- (d) on the next \$2,700 of taxable income or any part of that income, 4%;
- (e) on the next \$3,000 of taxable income or any part of that income, 5%;

- (f) on the next \$3,900 of taxable income or any part of that income, 6%;
- (g) on any taxable income in excess of \$17,400 or any part of that income, ~~6.9%~~ 6.75%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1) of this section.”

**Section 2.** Section 15-30-2103, MCA, is amended to read:

**“15-30-2103. Rate of tax.** (1) There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

- (a) on the first \$2,900 of taxable income or any part of that income, 1%;
- (b) on the next \$2,200 of taxable income or any part of that income, 2%;
- (c) on the next \$2,700 of taxable income or any part of that income, 3%;
- (d) on the next \$2,700 of taxable income or any part of that income, 4%;
- (e) on the next \$3,000 of taxable income or any part of that income, 5%;
- (f) on the next \$3,900 of taxable income or any part of that income, 6%;
- (g) on any taxable income in excess of \$17,400 or any part of that income, ~~6.9%~~ 6.75%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1) of this section.”

**Section 3.** Section 15-30-2103, MCA, is amended to read:

**“15-30-2103. Rate of tax.** (1) There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

- (a) on the first \$2,900 of taxable income or any part of that income, 1%;
- (b) on the next \$2,200 of taxable income or any part of that income, 2%;
- (c) on the next \$2,700 of taxable income or any part of that income, 3%;
- (d) on the next \$2,700 of taxable income or any part of that income, 4%;
- (e) on the next \$3,000 of taxable income or any part of that income, 5%;
- (f) on the next \$3,900 of taxable income or any part of that income, 6%;
- (g) on any taxable income in excess of \$17,400 or any part of that income, ~~6.9%~~ 6.75%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1) of this section.”

**Section 4.** Section 15-30-2103, MCA, is amended to read:

**“15-30-2103. Rate of tax.** (1) There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

- (a) on the first \$2,900 of taxable income or any part of that income, 1%;
- (b) on the next \$2,200 of taxable income or any part of that income, 2%;
- (c) on the next \$2,700 of taxable income or any part of that income, 3%;
- (d) on the next \$2,700 of taxable income or any part of that income, 4%;
- (e) on the next \$3,000 of taxable income or any part of that income, 5%;

- (f) on the next \$3,900 of taxable income or any part of that income, 6%;
- (g) on any taxable income in excess of \$17,400 or any part of that income, ~~6.9%~~ 6.75%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1) of this section.”

**Section 5.** Section 15-30-2103, MCA, is amended to read:

**“15-30-2103. Rate of tax.** (1) There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

- (a) on the first \$2,900 of taxable income or any part of that income, 1%;
- (b) on the next \$2,200 of taxable income or any part of that income, 2%;
- (c) on the next \$2,700 of taxable income or any part of that income, 3%;
- (d) on the next \$2,700 of taxable income or any part of that income, 4%;
- (e) on the next \$3,000 of taxable income or any part of that income, 5%;
- (f) on the next \$3,900 of taxable income or any part of that income, 6%;
- (g) on any taxable income in excess of \$17,400 or any part of that income, ~~6.9%~~ 6.75%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1) of this section.”

**Section 6. Effective dates – applicability.** (1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Section 1] is effective October 1, 2021, and applies to the income tax year beginning after December 31, 2021.

(3) [Section 2] is effective October 1, 2022, and applies to the income tax year beginning after December 31, 2022.

(4) [Section 3] is effective October 1, 2023, and applies to the income tax year beginning after December 31, 2023.

(5) [Section 4] is effective October 1, 2024, and applies to the income tax year beginning after December 31, 2024.

(6) [Section 5] is effective July 1, 2025, and applies to the income tax years beginning after June 30, 2025.

**Section 7. 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 8. Coordination instruction.** If Senate Bill No. 399 and [this act] are passed and approved and if both contain a section amending 15-30-2103, [this act] terminates December 31, 2023.

**Section 9. Termination.** (1) [Section 1] terminates December 31, 2022.

(2) [Section 2] terminates December 31, 2023.

(3) [Section 3] terminates December 31, 2024.

(4) [Section 4] terminates December 31, 2025.

(5) [Section 10] terminates January 1, 2025.

**Section 10. Contingent termination – legislative intent – specific findings – report to legislative finance committee.** (1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently

enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Section 1] terminates on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Section 2] terminates on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Section 3] terminates on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Section 4] terminates on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of this act may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of this act would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5).

Approved May 6, 2021

## CHAPTER NO. 489

[SB 173]

AN ACT GENERALLY REVISING EMERGENCY AND DISASTER SERVICES LAWS; ELIMINATING A CONTINUING EMERGENCY OR DISASTER WITHOUT LEGISLATIVE INVOLVEMENT; PROVIDING FOR A

LEGISLATIVE POLLING PROCESS BY THE SECRETARY OF STATE TO EXTEND A GOVERNOR'S DECLARATION OF EMERGENCY OR DISASTER; AMENDING SECTIONS 10-3-302 AND 10-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Legislative poll – continuation of state of emergency or disaster.** (1) (a) When the legislature is not in session, the governor may, in writing, request the secretary of state to poll the members of the legislature to determine if a majority of the members of the house of representatives and a majority of the members of the senate are in favor of a legislative declaration to extend a state of emergency under 10-3-302 or a state of disaster under 10-3-303.

(b) The legislature may extend a state of emergency or disaster for up to an additional 45 days by using the polling provisions of this section. The governor may make additional requests to extend a state of emergency or disaster, and the legislature may extend a state of emergency or disaster for up to an additional 45 days per request.

(2) The request must:

(a) state the conditions warranting the poll; and

(b) contain a legislative declaration to extend the governor's power.

(3) Within 3 calendar days after receiving a request, the secretary of state shall send a ballot to all legislators by using any reasonable and reliable means, including electronic delivery, that contains:

(a) the legislative declaration subject to the vote; and

(b) the date by which legislators shall return the ballot, which may not be more than 7 calendar days after the date the ballots were sent.

(4) A legislator may cast and return a vote by delivering the ballot in person, by mailing, or by sending the ballot by facsimile transmission or electronic mail 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 a majority of the members of each house vote to approve an extension of a state of emergency or disaster, the state of emergency or disaster continues based on the declaration that was sent with the ballot.

**Section 2.** 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 the governor determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency 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 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 10-3-110 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 ~~30~~ 45 days unless continuing conditions of the state of emergency exist, which 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 or by a poll of the

*members of the legislature as provided in [section 1] of continuing conditions of the state of emergency.”*

**Section 3.** 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 the governor determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster activates the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and 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 10-3-110 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 ~~45~~ 45 days unless continuing conditions of the state of disaster exist, which 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 *or by a poll of the members of the legislature as provided in [section 1] 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. *If the legislature terminates either declaration, the governor may not declare another state of emergency or disaster based on the same or substantially similar facts and circumstances.* 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 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 3, part 3, and the provisions of Title 10, chapter 3, part 3, apply to [section 1].

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

Approved May 12, 2021

## CHAPTER NO. 490

[SB 183]

AN ACT PROVIDING A STATUTE OF LIMITATIONS FOR OVERBILLING OF REGULATED TELECOMMUNICATIONS TARIFF CHARGES; PROVIDING A 2-YEAR STATUTE OF LIMITATIONS; PROVIDING FOR CONSISTENCY WITH FEDERAL PROVISIONS; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1. Overbilling of regulated telecommunications tariff charges – statute of limitations for recovery.** (1) A person or entity alleging overbilling of tariffed telecommunications charges by a regulated

telecommunications company shall file the action before the commission or a court of competent jurisdiction within 2 years of the date of overbilling.

(2) This section is intended to be consistent with limitations on actions as provided in 47 U.S.C. 415.

(3) For purposes of this section, the following definitions apply:

(a) "Overbilling" means presenting a bill to a customer of a regulated telecommunications company that includes charges that overstate the amount owed by the customer pursuant to the tariff for the service as approved by and on file with the commission.

(b) "Regulated telecommunications company" means all public utility companies that are regulated pursuant to 69-3-101(1)(f), Title 69, chapter 3, part 8, and 69-3-803(10).

(c) "Tariffed telecommunications charges" means all charges and fees for regulated services billed by a regulated telecommunications company as authorized by a tariff that has been approved by and filed with the commission.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 2, and the provisions of Title 69, chapter 3, part 2, apply to [section 1].

**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. Applicability.** [This act] applies to bills presented to a customer after [the effective date of this act].

Approved May 12, 2021

## CHAPTER NO. 491

[SB 191]

AN ACT GENERALLY REVISING STATE FINANCE LAWS; REVISING LAWS RELATED TO THE BUDGET STABILIZATION FUND; REVISING THE PURPOSE OF THE BUDGET STABILIZATION FUND; DEFINING TERMS; REVISING THE CAPITAL DEVELOPMENTS LONG-RANGE BUILDING PROGRAM ACCOUNT; CLARIFYING BUDGET AMENDMENT REQUIREMENTS; PROVIDING LEGISLATIVE INTENT; REVISING LAWS RELATING TO THE TRANSFER OF DEFENDANTS AFTER SENTENCING; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REPORT TO LEGISLATIVE COMMITTEES PRIOR TO TAKING CERTAIN ACTIONS; PROVIDING FOR TRANSFERS AND APPROPRIATIONS; AMENDING SECTION 1, CHAPTER 1, LAWS OF 2019; AMENDING SECTIONS 17-7-130, 17-7-209, 17-7-402, 46-19-101, AND 53-6-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 17-7-130, MCA, is amended to read:

**"17-7-130. Budget stabilization reserve fund -- rules for deposits and transfers -- purpose.** (1) There is an account in the state special revenue fund established by 17-2-102 known as the budget stabilization reserve fund.

(2) The purpose of the budget stabilization reserve fund is:

~~(a) to mitigate budget reductions when there is a revenue shortfall; and~~

~~(b) when there are funds in excess of the reserve level, to:~~

~~(i) pay down the debt service on bonds for capital projects previously authorized by the legislature if allowed without penalty by the terms of the bond issuance; and~~

~~(ii) delay, forego, or reduce the amount of an issuance of bonds authorized by the legislature.~~

(3) By August 1 of each year, the department of administration shall certify to the legislative fiscal analyst and the budget director the following:

(a) the unaudited, unassigned ending fund balance of the general fund for the ~~prior~~ *most recently completed* fiscal year; and

(b) the amount of unaudited general fund revenue and transfers into the general fund received in the prior fiscal year recorded when that fiscal year's statewide accounting, budgeting, and human resource system records are closed. General fund revenue and transfers into the general fund are those recorded in the statewide accounting, budgeting, and human resource system using generally accepted accounting principles in accordance with 17-1-102.

~~(4) For the fiscal years beginning July 1, 2016, through July 1, 2020, if actual general fund revenue exceeds the revenue estimate established pursuant to 5-5-227 for that fiscal year, excess revenue over the amount of revenue that exceeds the revenue estimate by \$15 million is allocated as follows:~~

~~(a) 50% remains in the general fund; and~~

~~(b) 50% is transferred into the budget stabilization reserve fund on or before August 15 of the following fiscal year.~~

~~(5) Starting in the fiscal year beginning July 1, 2021, the *The state treasurer shall calculate the operating reserve level of general fund balance defined in 17-7-102(11). The treasurer shall first apply the excess revenue to reach the operating reserve level general fund balance, if necessary. Once the general fund balance is at the reserve level, 75% of the remaining excess revenue is transferred to the budget stabilization reserve fund.* state treasurer shall transfer by August 15 of the following fiscal year, from the general fund to the budget stabilization reserve fund an amount equal to 50% of the excess revenue for the fiscal year.~~

~~(6)(5) After a transfer is made pursuant to subsection (4) or (5), if the balance of the fund exceeds an amount equal to 4.5% of all general fund appropriations in the second year of the biennium in the subsequent fiscal year, then 50% of any funds in excess of that amount must be transferred to the account established in 17-7-208 17-7-209 and 50% to the general fund by August 16 of each fiscal year.~~

~~(7)(6) For the purposes of this section, the following definitions apply:~~

~~(a) "Adjusted compound annual growth rate revenue" means general fund revenue for the fiscal year prior to the ~~prior~~ most recently completed fiscal year plus the growth amount.~~

~~(b) "Excess revenue" means the amount of general fund revenue, including transfers in, for the most recently completed fiscal year minus adjusted compound annual growth rate revenue.~~

~~(c) "Growth amount" means general fund revenue for the ~~prior~~ fiscal year prior to the most recently completed fiscal year multiplied by the growth rate.~~

~~(d) "Growth rate" means the average compound rate of growth of general fund revenue for the most recently completed 6 fiscal years annual compound growth rate of general fund revenue realized over the period 12 years prior to the most recently completed fiscal year, including the most recently completed fiscal year."~~

**Section 2.** Section 17-7-209, MCA, is amended to read:

**"17-7-209. Capital developments long-range building program account.** (1) (a) There is a capital developments long-range building program account in the capital projects fund type to fund capital developments.

(b) *If there are funds in excess of the amount needed for appropriations of the capital fund type, then the excess funds:*

(i) *may be used to pay down the debt service on bonds for capital projects previously authorized by the legislature if allowed without penalty by the terms of the bond issuance; and*

(ii) *must be used to delay, forego, or reduce the amount of an issuance of bonds authorized by the legislature.*

(2) Interest earnings, project carryover funds, administrative fees, and miscellaneous revenue must be retained in the account.

(3) The legislature may transfer unencumbered funds from the account only to supplement funding local infrastructure.

(4) The state treasurer may temporarily borrow from the fund to address cash balance deficiencies in the general fund. A loan made to the general fund does not bear interest and must be recorded in the state accounting records. The fund may not be so impaired by a loan that all legal obligations against the fund cannot be met.”

**Section 3.** Section 17-7-402, MCA, is amended to read:

**“17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (7), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections;

(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7;

(viii) revenue collected for the Water Pollution Control State Revolving Fund Act under the provisions of Title 75, chapter 5, part 11;

(ix) revenue collected for the Drinking Water State Revolving Fund Act under the provisions of Title 75, chapter 6, part 2;

(x) state special revenue adjustments required to allocate costs for leave or terminal leave within an agency in accordance with federal circular A-87; or

(xi) revenue generated from fees collected by the department of justice for dissemination of criminal history record information pursuant to Title 44, chapter 5, part 3; or

(xii) *additional state special funds identified in House Bill No. 2 as being eligible for budget amendments for the fiscal years beginning July 1, 2021, and July 1, 2022;*

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless:

(i) an emergency justifies the expenditure;

(ii) the expenditure is authorized under subsection (1)(a); or

(iii) the expenditure is exempt under subsection (5);

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium, except that budget amendments for federal funds may extend to the end of the federal fiscal year.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

(3) Subject to subsection (1)(f), all budget amendments must itemize planned expenditures by fiscal year.

(4) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst.

(5) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(6) An appropriation for a nonrecurring item that would usually be the subject of a budget amendment must be submitted to the legislature for approval during a legislative session between January 1 and the senate hearing on the budget amendment bill. The bill may include authority to spend money in the current fiscal year and in both fiscal years of the next biennium.

(7) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1).”

**Section 4.** Section 53-6-101, MCA, is amended to read:

**“53-6-101. Montana medicaid program – authorization of services.**

(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The department shall administer the Montana medicaid program.

(2) The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services:

(a) protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;

(b) giving preference to the elimination or restoration of an entire medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

(c) giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.

(3) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age, in accordance with federal regulations and subsection (10)(b);

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department;

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2);

(m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as provided in 33-22-153;

(n) for children 18 years of age and younger, habilitative services as defined in 53-4-1103; and

(o) services provided by a person certified in accordance with 37-2-318 to provide services in accordance with the Indian Health Care Improvement Act, 25 U.S.C. 1601, et seq.

(4) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) services of psychologists licensed under Title 37, chapter 17;

(p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;

(q) services of behavioral health peer support specialists certified under Title 37, chapter 38, provided to adults 18 years of age and older with a diagnosis of a mental disorder, as defined in 53-21-102; and

(r) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(5) Services for persons qualifying for medicaid under the medically needy category of assistance, as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy category of assistance.

(6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving cash assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child and for all adult recipients of medical assistance only who are covered under a group related to a program providing cash assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection (3) but may include those optional services listed in subsections (4)(a) through (4)(r) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, 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.

(7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(8) (a) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(b) The department shall strive to close gaps in services provided to individuals suffering from mental illness and co-occurring disorders by doing the following:

(i) simplifying administrative rules, payment methods, and contracting processes for providing services to individuals of different ages, diagnoses, and treatments. Any adjustments to payments must be cost-neutral for the biennium beginning July 1, 2017.

(ii) publishing a report on an annual basis that describes the process that a mental health center or chemical dependency facility, as those terms are defined in 50-5-101, must utilize in order to receive payment from Montana medicaid for services provided to individuals of different ages, diagnoses, and treatments.

(9) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(10) (a) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(b) The department shall, with reasonable promptness, provide access to all medically necessary services prescribed under the early and periodic

screening, diagnosis, and treatment benefit, including access to prescription drugs and durable medical equipment for which the department has not negotiated a rebate.

(11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(12) (a) *Prior to enacting changes to provider rates, medicaid waivers, or the medicaid state plan, the department shall report the information to:*

(i) *the children, families, health, and human services interim committee; and*

(ii) *the legislative finance committee.*

(b) *In its report to the committees, the department shall provide an explanation for the proposed changes and an estimated budget impact to the department over the next 4 fiscal years.*

(13) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program after taking into consideration the funding principles set forth in subsection (2). (Subsection (3)(o) terminates September 30, 2023--sec. 7, Ch. 412, L. 2019.)”

**Section 5. Legislative intent – medicaid transfers.** If, during the 2023 biennium, expenditures in the disabilities and employment transition division, the developmental services division, the health resources division, the senior and long term care division, the addictive and mental disorders division, or the child and family services division are estimated to exceed appropriations, thereby requiring actions under 17-7-301, it is the intent of the legislature that the department of public health and human services may, with prior approval of the office of budget and program planning, transfer budget authority from any division in the department to any other division listed above to eliminate a potential deficit or supplemental request and eliminate the need for actions under 17-7-301. Total transfers to a division may not exceed 10% of the budget of the division receiving the transfer. Such transfers between divisions must be reported by the department to the legislative finance committee at its next regular meeting. For the 2023 biennium, this language supersedes language contained in House Bill No. 341 and House Bill No. 275, if passed and approved.

**Section 6.** Section 1, Chapter 1, Laws of 2019, is amended to read:

**“Section 1. Appropriation.** (1) The following amounts are appropriated from the state general fund for fiscal years 2019, 2020, and 2021 for the operation of the 66th legislature and the costs of preparing for the 67th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate \$3,850,818
2. House of Representatives \$6,346,581
3. Legislative Services Division \$1,069,866

(2) The following amounts are appropriated from the state general fund for fiscal year 2021 for the initial costs of the 67th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate \$316,674
2. House \$521,853
3. Legislative Services Division \$16,500

(3) *Funds in subsections (1) and (2) appropriated to the Senate and the House of Representatives that are unencumbered and unexpended on June 30, 2021, may be used to support the 67th legislature for the purposes in House Bill No. 483.”*

**Section 7. Transfer of funds.** The state treasurer shall transfer \$165 million from the general fund to the capital developments long-range building program account established in 17-7-209 by June 30, 2021.

**Section 8. Appropriation.** (1) For the biennium beginning July 1, 2021, there is appropriated \$1,500,000 from the general fund to the office of budget and program planning to be allocated to agencies at the discretion of the office of budget and program planning. Funding may be included as part of the base budget for the next legislative session.

(2) For the biennium beginning July 1, 2021, there is appropriated \$1,000,000 from a state special revenue account to the office of budget and program planning to be allocated to agencies at the discretion of the office of budget and program planning. Funding may be included as part of the base budget for the next legislative session.

**Section 9. Coordination instruction.** If both [this act] and House Bill No. 578 are passed and approved, then 46-19-101 must be amended as follows:

**“46-19-101. Commitment of defendant – transfer of information in possession of sheriff – notification to court of delay.** (1) Upon oral pronouncement of a sentence imposing punishment of imprisonment, commitment to the department of corrections, placement in a prerelease center, community corrections facility, or other place of confinement, or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of confinement, commitment, or execution and give that place an order, which must be signed by the sentencing judge on the date of oral pronouncement of sentence, stating that the defendant is sentenced to that place for imprisonment, commitment, placement, or execution, as the case may be. The order is authority for that place to hold the defendant pending receipt by that place of a copy of the written judgment.

(2) When a sheriff delivers the defendant to the place of confinement, commitment, or execution, the sheriff shall deliver at the same time all information in the possession of the sheriff regarding the physical and mental health of the defendant, including health information contained in a presentence investigation report.

(3) *If a defendant is sentenced to prison, another place of confinement operated by or under contract with the department of corrections, or committed to the department and the offender is not transported to the placement within 10 days of receipt of sentencing documents, the department shall notify the court in writing of the reason for the delay.”*

**Section 10. Coordination instruction.** If both [this act] and House Bill No. 497 are passed and approved, then [section 4 of this act], amending 53-6-101, is void and 53-6-101 must be amended to include a new subsection (12) that reads as follows:

*“(12)(a) Prior to enacting changes to provider rates, medicaid waivers, or the medicaid state plan, the department of public health and human services shall report this information to the following committees:*

- (i) the children, families, health, and human services interim committee;*
- (ii) the legislative finance committee; and*
- (iii) the health and human services budget committee.*

*(b) In its report to the committees, the department shall provide an explanation for the proposed changes and an estimated budget impact to the department over the next 4 fiscal years.”*

**Section 11. Coordination instruction.** If both [this act] and House Bill No. 8 are passed and approved, then [section 2(4)(b) of House Bill No. 8] must read:

- “(b) The loan in this subsection (4) is contingent on the following:*

(i) the forming of a water users' association of Montana users of the waters flowing from the Milk River that includes cities, towns, districts, water users' associations, and other unassociated individuals and entities; and

(ii) the water users' association demonstrating to the satisfaction of the department of natural resources and conservation its financial capacity, through water user fees or other available sources of funding, to pay the annual costs of the loan repayment over the term of the loan."

**Section 12. Coordination instruction.** If both [this act] and House Bill No. 629 are passed and approved, then [section 20 of House Bill No. 629] must read:

"**Section 20. Appropriation.** There is appropriated \$271,895 from the general fund to the department of labor and industry for the fiscal year beginning July 1, 2022, for the purposes of complying with [this act]."

**Section 13. Effective date.** [This act] is effective on passage and approval.

Approved May 12, 2021

## CHAPTER NO. 492

[HB 221]

AN ACT ALLOWING CAMPAIGN CONTRIBUTIONS TO BE USED BY A CANDIDATE TO PAY FOR THE CANDIDATE'S CHILD-CARE EXPENSES WHILE ENGAGED IN CAMPAIGN ACTIVITY; REQUIRING REPORTING OF CHILD-CARE EXPENSES PAID WITH CAMPAIGN CONTRIBUTIONS; PROVIDING THAT IN-KIND CHILD CARE PROVIDED BY CERTAIN INDIVIDUALS IS NOT A CONTRIBUTION; PROHIBITING CAMPAIGN CONTRIBUTIONS TO BE USED FOR CHILD CARE AFTER THE CANDIDATE FILES THE CANDIDATE'S CLOSING REPORT; AND AMENDING SECTION 13-1-101, MCA.

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

**Section 1. Child-care expenses.** (1) While a candidate is engaged in campaign activity, a candidate may use contributions deposited in the candidate's primary campaign depository as provided in 13-37-205 to pay the candidate's reasonable and necessary child-care expenses.

(2) When a candidate expends funds from the candidate's primary campaign depository as provided in 13-37-205 to pay for the candidate's child-care expenses, each expenditure must be reported as provided in Title 13, chapter 37, part 2.

(3) After the candidate's closing campaign report provided for in 13-37-228 is filed, the candidate may not expend surplus campaign funds for the candidate's child-care expenses as provided in 13-37-240(1).

(4) In-kind child care provided to the candidate while the candidate is engaging in campaign activity by the candidate's family or an individual known to the candidate is not a contribution and is not reportable under this chapter. The commissioner shall broadly construe this provision.

**Section 2.** 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 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, is 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) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or 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 on 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.

(7) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(8) "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; or

(c) an officeholder who is the subject of a recall election.

(9) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) 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) The term does not mean 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.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(10) “Coordinated”, including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(11) “De minimis act” means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(12) “Election” means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(13) (a) “Election administrator” means, except as provided in subsection (13)(b), 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.

(b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties even if the school election is administered by the school district clerk.

(14) (a) “Election communication” means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

(iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees; or

(v) a communication that the commissioner determines by rule is not an election communication.

(15) “Election judge” means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

(16) (a) “Electioneering communication” means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(v) a communication that the commissioner determines by rule is not an electioneering communication.

(17) "Elector" means an individual qualified to vote under state law.

(18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care expenses as provided in [section 1]; or

(ii)(iii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) except as provided in subsection (18)(a)(ii), payments by a candidate 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, blog, 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.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(19) "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(20) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

(21) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(22) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(23) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting

or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (23), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

(24) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

(25) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

(26) "Individual" means a human being.

(27) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(28) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(29) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

(30) "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.

(31) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

(32) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(33) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

(34) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

(35) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(36) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

(37) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(38) "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.

(39) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(40) "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 13-17-503.

(41) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(42) "Regular school election" means the school trustee election provided for in 20-20-105(1).

(43) "School election" has the meaning provided in 20-1-101.

(44) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(45) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(46) "Signature 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.

(47) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(48) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(49) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(50) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

(51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(52) "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.
- (53) “Voter interface device” means a voting system that:
  - (a) is accessible to electors with disabilities;
  - (b) communicates voting instructions and ballot information to a voter;
  - (c) allows the voter to select and vote for candidates and issues and to verify and change selections; and
  - (d) produces a paper ballot that displays electors’ choices so the elector can confirm the ballot’s accuracy and that may be manually counted.
- (54) “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 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section 1].

Approved May 12, 2021

## CHAPTER NO. 493

[SB 303]

AN ACT GENERALLY REVISING LAWS RELATED TO TELECOMMUNICATIONS CONTRACTS THAT PROVIDE SERVICES FOR STATE INMATES; REQUIRING AN INTERIM STUDY OF TELECOMMUNICATIONS CONTRACTS, FEES, AND COMMISSARY COSTS; REQUIRING A PERFORMANCE AUDIT OF THE INMATE WELFARE FUND; PROVIDING AN APPROPRIATION; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Interim study of inmate telecommunications services – performance audit – reports.** (1) The law and justice interim committee established in 5-5-226 shall study inmate telecommunications contracts and costs during the 2021-2022 interim. The study must include contracts and costs in state prisons, other state-owned or operated facilities, and county detention centers.

(2) The study must:

- (a) examine the current phone call rates and any ancillary fees charged by state prisons and facilities and county detention centers;
- (b) review cooperative purchasing agreement laws to determine how the state and counties could partner to provide for telecommunications services, including the possibility of partnering with another state to provide services;
- (c) review methods used in other states to provide telecommunications services to state and local inmates, including whether states use general fund appropriations to subsidize phone rates for inmates;
- (d) review studies to determine if inmate recidivism is lowered by continued contact with families and friends while incarcerated;
- (e) examine the statutory basis for the inmate welfare fund, including funding sources for the fund and expenditures from it;
- (f) review federal rate caps for interstate calls from state prisons and detention centers and any effects federal law might have on state and local telecommunications contracts; and
- (g) determine, if possible, the lowest cost that could be assessed to inmates in state and county facilities for phone calls.

(3) The law and justice interim committee shall consult with the department of corrections, county sheriffs and detention center administrators, families of incarcerated or detained individuals and organizations advocating on their behalf, telecommunications services providers, and other stakeholders the committee considers necessary.

(4) All aspects of the study must be concluded prior to September 15, 2022. Final results of the study must be reported to the 68th legislature.

(5) The legislative audit division shall conduct a performance audit of the inmate welfare fund and report results of the audit to the legislative audit committee, the law and justice interim committee, and the 68th legislature.

**Section 2. Appropriation.** There is appropriated \$500 from the general fund to the legislative services division for the biennium beginning July 1, 2021. The appropriation must be used for the purposes of conducting the study required by [section 1]. Unused funds must revert to the general fund.

**Section 3. Contingent voidness.** (1) Pursuant to Joint Rule 40-65, if [this act] does not include an appropriation prior to being transmitted to the governor, then [this act] is void.

(2) If the appropriation in [section 2] is vetoed, then [this act] is void.

**Section 4. Effective date.** [This act] is effective July 1, 2021.

**Section 5. Termination.** [This act] terminates December 31, 2022.

Approved May 12, 2021

## CHAPTER NO. 494

[SB 319]

AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; CREATING JOINT FUNDRAISING COMMITTEES; PROVIDING FOR CERTAIN REPORTING; ESTABLISHING THAT IF STUDENT ORGANIZATIONS THAT ARE REQUIRED TO REGISTER AS POLITICAL COMMITTEES ARE FUNDED THROUGH ADDITIONAL OPTIONAL STUDENT FEES, THOSE FEES MUST BE OPT-IN; PROHIBITING CERTAIN POLITICAL ACTIVITIES IN CERTAIN PLACES OPERATED BY A PUBLIC POSTSECONDARY INSTITUTION; PROVIDING FOR JUDICIAL RECUSALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AMENDING SECTIONS 13-1-101, 13-35-225, 13-35-237, 13-37-201, 13-37-202, 13-37-203, 13-37-204, 13-37-205, 13-37-207, 13-37-208, 13-37-216, 13-37-217, 13-37-218, 13-37-225, 13-37-226, 13-37-227, 13-37-228, AND 13-37-229, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Joint fundraising committee.** (1) (a) One or more candidates for a statewide office and political committees may join together to establish a joint fundraising committee to act as a fundraising representative for all participants. A joint fundraising committee may not be construed to be a political committee.

(b) The participants in a joint fundraising committee may only include a candidate for statewide office, an independent committee, or a political party committee. Any combination of these entities may form a joint fundraising committee.

(c) The participants in a joint fundraising committee may not include an incidental committee, a ballot issue committee, a judicial candidate, or a political committee that is a corporation or a union.

(d) The joint fundraising committee may not be a participant in any other joint fundraising effort.

(e) A participant may participate in an unlimited amount of concurrent joint fundraising committees.

(f) A joint fundraising committee may not amend its list of participants after filing its certification and organizational statement as provided by 13-37-201.

(2) A joint fundraising committee shall:

(a) appoint a campaign treasurer and certify an organization statement pursuant to 13-37-201;

(b) designate one separate campaign depository as provided in 13-37-205 to be used solely for the receipt of all contributions received and the disbursement of all expenditures made by the joint fundraising committee; and

(c) keep records as provided by 13-37-207 and 13-37-208.

(3) The participants in a joint fundraising committee shall enter into a written agreement that states a formula for the allocation of fundraising proceeds. The formula must be stated as the amount or percentage of each contribution received to be allocated to each participant. The joint fundraising committee shall retain the written agreement for the same amount of time the campaign treasurer is required to retain accounts under 13-37-208(3) and shall make it available to the commissioner on request.

(4) Each solicitation for contributions to the joint fundraising committee must include a notice that includes the following information:

(a) the name of each participant in the joint fundraising committee;

(b) the allocation formula to be used for distributing joint fundraising proceeds;

(c) a statement informing contributors that, despite the state allocation formula, they may designate their contributions for particular participants;

(d) a statement informing contributors that the allocation formula may change if a contributor makes a contribution that would exceed the amount that a contributor may give to a participant or if a participant is otherwise prohibited from receiving the contribution; and

(e) if one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(5) (a) A joint fundraising committee may accept contributions on behalf of its participants under the provisions of the fundraising formula and may make expenditures on behalf of and to its participants under the limitations provided in this section.

(b) Except as provided by subsection (8), a joint fundraising committee may not accept a contribution that, when allocated pursuant to the joint fundraising committee's allocation formula in subsection (3), in addition to any other contributions received by the participant from that contributor, would be in excess of the contribution limits of that contributor calculated pursuant to this section. A participant may not accept contributions allocated from the joint fundraising committee that, but for the joint fundraising committee acting as an intermediary, the participant could not otherwise accept.

(c) Contributions to the joint fundraising committee may only be deposited in the joint fundraising committee depository.

(d) The joint fundraising committee shall report and maintain records concerning contributions as provided by Title 13, chapter 37. The joint fundraising committee shall make its records available to each participant.

(e) A participant shall make the participant's contributor records available to the joint fundraising committee to enable the joint fundraising committee to carry out its duty to screen contributions pursuant to subsection (6)(a).

(6) (a) The joint fundraising committee shall screen all contributions received to ensure the prohibitions provided in Title 13, chapters 35 and 37, are followed.

(b) A corporation or a union prohibited from making a contribution to a candidate under 13-35-227(1) may make a contribution to a joint fundraising committee if one or more participants are not otherwise prohibited from receiving the contribution. A joint fundraising committee may not make an expenditure in contravention of 13-35-227(1), and a participant in a joint fundraising committee prohibited from accepting or receiving a contribution under 13-35-227(1) may not accept or receive such a contribution from a joint fundraising committee.

(c) A joint fundraising committee may not make an expenditure in contravention of 13-35-231 if a participant is a political party committee.

(d) A joint fundraising committee may not act as an intermediary for contributions or expenditures by any entity, including participants, that is otherwise prohibited under Title 13, chapters 35 and 37.

(7) For reporting and limitation purposes:

(a) the joint fundraising committee shall report contributions in the reporting period in which they are received and expenditures in the reporting period in which they are made; and

(b) the date of receipt of a contribution by a participant is the date that the contribution is disbursed by the joint fundraising committee to the participant. However, the funds must be allocated to the general election or primary election cycle during which the joint fundraising committee received them.

(8) (a) Expenditures by the joint fundraising committee must be allocated to each participant in proportion to the formula in the written agreement provided for in subsection (3).

(b) If expenditures are made for fundraising costs, a participant may pay more than its proportionate share. However, the amount that is in excess of the participant's proportionate share may not exceed the amount that the participant could legally contribute to the remaining participants. A participant may only pay expenditures on behalf of another participant subject to the limits provided in 13-37-216 and 13-37-218.

(c) If distribution according to the fundraising formula extinguishes the debts of one or more participants and results in a surplus for those participants, or if distribution under the formula results in a violation of the contribution limits under 13-37-216 or 13-37-218, the joint fundraising committee may reallocate the excess funds. Reallocation must be based on the remaining participants' proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 13-37-216, the joint fundraising committee shall return the amount of the contribution that exceeds the limit to the contributor. However, contributions that have been designated by a contributor may not be reallocated by the joint fundraising committee without prior written permission of the contributor. If the contributor does not give the contributor's permission for reallocation, the funds must be returned to the contributor.

(9) The joint fundraising committee shall allocate total gross contributions received by the joint fundraising committee to the participants. The joint fundraising committee shall inform each participant of the participant's gross contribution total, make the joint fundraising committee's contribution and

expenditure records available to each participant, and subject to the limitations provided in 13-37-216, 13-37-218, and this section, pay fundraising expenses and distribute each participant's allocated net contributions.

(10) An independent committee may not be construed to violate the requirement that it is not controlled directly or indirectly by a candidate or that it may not coordinate with a candidate in connection with the making of expenditures as provided in 13-1-101 solely because:

(a) the independent committee participates in a joint fundraising committee; and

(b) the joint fundraising committee makes a total gross contribution to a candidate that is in excess of an individual independent committee's limits provided in 13-37-216 but that is not in excess of the remaining combined limit, if any, of all the entities within the joint fundraising committee.

(11) A candidate may not be construed to violate the provisions of 13-37-218 solely because the joint fundraising committee receives aggregate contributions in excess of the limit on the candidate's total combined monetary contributions from political committees, as long as the gross amount allocated to the candidate by the joint fundraising committee on behalf of political committees, along with any other contributions received by the candidate from political committees, does not exceed the limits provided in 13-37-218.

(12) The joint fundraising committee is liable for its violations of the provisions of Title 13, chapters 35 and 37. In addition, each participant of a joint fundraising committee is severally liable for violations of the provisions of Title 13, chapters 35 and 37, pertaining to the contributions allocated or disbursed to the participant by the joint fundraising committee.

**Section 2. Student organizations functioning as political committees – funding.** (1) A student organization that is required to register as a political committee and is regularly active may be funded in the same manner as other student organizations, except that if the organization is funded by an additional optional student fee, the fee must be an opt-in fee.

(2) The opt-in fee may only be delivered to the student organization by means of a written instrument signed by the student or through an electronic payment system that operates independently of any systems, electronic or otherwise, used by a public postsecondary institution for the purpose of collecting, receiving, or disbursing any tuition or fees.

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

(a) "Benefit" means any type of advantage, including but not limited to:

(i) recognition;

(ii) registration;

(iii) the use of facilities of the public postsecondary institution for meetings or speaking purposes;

(iv) the use of channels of communication; and

(v) funding sources that are otherwise available to other student organizations at the public postsecondary institution.

(b) "Political committee" has the meaning provided in 13-1-101.

(c) "Public postsecondary institution" means:

(i) a unit of the Montana university system as described in 20-25-201; or

(ii) a Montana community college defined and organized as provided in 20-15-101.

(d) "Regularly active" means having expended more than \$10,000 in each of two or more statewide elections in the preceding 10 years.

(e) "Student organization" means an officially recognized group or a group seeking official recognition at a public postsecondary institution that is

comprised of students who receive or are seeking to receive a benefit through the public postsecondary institution.

**Section 3.** 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 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, is 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) (a) “Ballot issue” or “issue” means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or 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 on 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.

(7) “Ballot issue committee” means a political committee specifically organized to support or oppose a ballot issue.

(8) “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; or

(c) an officeholder who is the subject of a recall election.

(9) (a) “Contribution” means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) 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) The term does not mean 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.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(12) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(13) (a) "Election administrator" means, except as provided in subsection (13)(b), 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.

(b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties even if the school election is administered by the school district clerk.

(14) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

(iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees; or

(v) a communication that the commissioner determines by rule is not an election communication.

(15) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

(16) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(v) a communication that the commissioner determines by rule is not an electioneering communication.

(17) "Elector" means an individual qualified to vote under state law.

(18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate 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, blog, 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.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(19) "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(20) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

(21) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(22) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(23) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (23), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

(24) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

(25) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

(26) "Individual" means a human being.

(27) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(28) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(29) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

(30) "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.

(31) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

(e) *A joint fundraising committee is not a political committee.*

(32) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(33) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

(34) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

(35) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(36) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

(37) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(38) "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.

(39) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(40) "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 13-17-503.

(41) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(42) "Regular school election" means the school trustee election provided for in 20-20-105(1).

(43) "School election" has the meaning provided in 20-1-101.

(44) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(45) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(46) "Signature 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.

(47) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(48) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(49) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(50) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

(51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(52) "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.

(53) "Voter interface device" means a voting system that:

- (a) is accessible to electors with disabilities;
- (b) communicates voting instructions and ballot information to a voter;
- (c) allows the voter to select and vote for candidates and issues and to verify and change selections; and

(d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's accuracy and that may be manually counted.

(54) "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 4.** Section 13-35-225, MCA, is amended to read:

**"13-35-225. Election materials not to be anonymous -- notice -- penalty.** (1) All election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. The attribution must contain:

(a) for election communications or electioneering communications financed by a candidate or a candidate's campaign finances, the name and the address of the candidate or the candidate's campaign;

(b) for election communications, electioneering communications, or independent expenditures financed by a political committee *or a joint fundraising committee*, the name of the committee, the name of the committee treasurer, deputy treasurer, secretary, vice chairperson, or chairperson, as designated pursuant to 13-37-201(2)(b), and the address of the committee or the named committee officer; and

(c) for election communications, electioneering communications, or independent expenditures financed by a political committee that is a corporation or a union, the name of the corporation or union, its chief executive officer or equivalent, and the address of the principal place of business.

(2) Communications in a partisan election financed by a candidate, ~~or~~ a political committee organized on the candidate's behalf, *or a joint fundraising committee with a participant who is a candidate or a political committee organized on the candidate's behalf* must state the candidate's party affiliation or include the party symbol.

(3) If a document or other article of advertising is too small for the requirements of subsections (1) and (2) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information or statement, at the time of its public distribution.

(4) If information required in subsections (1) and (2) is omitted or not printed or if the information required by subsection (3) is not filed with the commissioner, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

(a) file notification of the omission with the commissioner of political practices within 2 business days of the discovery or notification;

(b) bring the material into compliance with subsections (1) and (2) or file the information required by subsection (3) with the commissioner; and

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

(5) Whenever the commissioner receives a complaint alleging any violation of subsections (1) and (2), the commissioner shall as soon as practicable assess the merits of the complaint.

(6) (a) If the commissioner determines that the complaint has merit, the commissioner shall notify the complainant and the candidate or political committee of the commissioner's determination. The notice must state that the candidate or political committee shall bring the material into compliance as required under this section:

(i) within 2 business days after receiving the notification if the notification occurs more than 7 days prior to an election; or

(ii) within 24 hours after receiving the notification if the notification occurs 7 days or less prior to an election.

(b) When notifying the candidate or campaign committee under subsection (6)(a), the commissioner shall include a statement that if the candidate, or political committee, or *joint fundraising committee* fails to bring the material into compliance as required under this section, the candidate, or political committee, or *joint fundraising committee* is subject to a civil penalty pursuant to 13-37-128."

**Section 5.** Section 13-35-237, MCA, is amended to read:

**"13-35-237. Disclaimer on election materials funded by anonymous contributors.** If a political committee or a *joint fundraising committee* claims to be exempt from disclosing the name of a person making a contribution to the political committee or the *joint fundraising committee*, the committee shall clearly and conspicuously include in all communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising or issue advocacy the following disclaimer: "This communication is funded by anonymous sources. The voter should determine the veracity of its content."

**Section 6.** Section 13-37-201, MCA, is amended to read:

**"13-37-201. Campaign treasurer.** (1) Except as provided in 13-37-206, each candidate, and each political committee, and each *joint fundraising committee* shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section.

(2) (a) A candidate shall file the certification within 5 days after becoming a candidate.

(b) Except as provided in subsection (2)(c), a political committee and a *joint fundraising committee* shall file the certification, which must include an organizational statement and the name and address of all officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. A *joint fundraising committee* shall also provide a list of participants with the certification.

(c) A political committee that is seeking to place a ballot issue before the electors shall file the certification, including the information required in subsection (2)(b), within 5 days after the issue becomes a ballot issue, as defined in 13-1-101(6)(b).

(3) The certification of a candidate, or political committee, or *joint fundraising committee* must be filed with the commissioner."

**Section 7.** Section 13-37-202, MCA, is amended to read:

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

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

**Section 8.** Section 13-37-203, MCA, is amended to read:

**“13-37-203. Qualifications of campaign and deputy campaign treasurers.** (1) Any campaign or deputy campaign treasurer appointed pursuant to 13-37-201 and 13-37-202 must be a registered voter in this state.

(2) An individual may be appointed and serve as a campaign treasurer of a candidate, ~~and a~~ political committee, ~~or joint fundraising committee~~ or two or more candidates, ~~and~~ political committees, ~~or joint fundraising committees~~. A candidate may serve as the candidate’s own campaign or deputy campaign treasurer ~~or as the treasurer or deputy treasurer of a joint fundraising committee in which the candidate is a participant~~. An individual may not serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate, ~~or~~ political committee, ~~or joint fundraising committee~~ until the individual has been designated and the individual’s name certified by the candidate or political committee.”

**Section 9.** Section 13-37-204, MCA, is amended to read:

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

**Section 10.** Section 13-37-205, MCA, is amended to read:

**“13-37-205. Campaign depositories.** (1) Except as provided in 13-37-206, each candidate, ~~and~~ each political committee, ~~and each joint fundraising committee~~ shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee.

(2) The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2).

(3) Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository.

(4) The candidate, ~~or political committee, or joint fundraising committee~~ shall file the name and address of each designated primary and secondary depository at the same time and with the same officer with whom the candidate or committee files the name of the candidate's or committee's campaign treasurer pursuant to 13-37-201.

(5) This section does not prevent a ~~political committee or candidate, political committee, or joint fundraising committee~~ from having more than one campaign account in the same depository, but a candidate may not utilize the candidate's regular or personal account in the depository as a campaign account."

**Section 11.** Section 13-37-207, MCA, is amended to read:

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

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

**Section 12.** Section 13-37-208, MCA, is amended to read:

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

(b) The accounts described in subsection (1)(a) must be current as of the 5th day before the date of filing of a report as specified in 13-37-228.

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

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

**Section 13.** 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 (3) and subject to 13-35-227 and 13-37-219, 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) *Except as provided in [section 1] and subsection (5) of this section:*

(i) *A a contribution to a candidate includes contributions made to any political committee organized on the candidate's behalf; and*

(ii) *A a political committee that is not independent of the candidate is considered to be organized on the candidate's behalf.*

(2) All political committees except those of political party organizations are subject to the provisions of subsection (1). Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection (3) and subject to 13-37-219, 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.

(3) (a) The commissioner shall adjust the limitations in subsections (1) and (2) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 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 (2).

(c) The commissioner shall publish the revised limitations as a rule.

(4) A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.

(5) *For the purposes of applying the limits in this section if the contributions were received by a joint fundraising committee, a contribution must be construed to be:*

(a) *from the person who originally contributed funds to the joint fundraising committee; and*

(b) *received by the candidate participant to whom the funds were allocated by the joint fundraising committee as provided in [section 1].*

~~(5)~~(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."

**Section 14.** Section 13-37-217, MCA, is amended to read:

**"13-37-217. Contributions in name of undisclosed principal.** (1) *A Except as provided by subsection (2), a person may not make a contribution of the person's own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies the money. A person may not knowingly receive a contribution or enter or cause the contribution to be entered in the person's accounts or records in another name than that of the person by whom it was actually furnished.*

(2) *A joint fundraising committee shall allocate contributions as provided in [section 1] to a participant in the name of the original contributor to the joint fundraising committee, and a participant may receive and may enter these contributions into the participant's account. A participant shall account for the original contributors of the gross contributions allocated by the joint fundraising committee in the participant's records.*

**Section 15.** Section 13-37-218, MCA, is amended to read:

**"13-37-218. Limitations on receipts from political committees.**

(1) A candidate for the state senate may receive no more than \$2,150 in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than \$1,300 in total combined monetary contributions from all political committees contributing to the candidate's campaign.

(2) The limitations in this section must be multiplied by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2003. The resulting figure must be rounded up or down to the nearest \$50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals.

(3) The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

(4) *If a candidate has received contributions from a joint fundraising committee, the limits provided in this section must be applied as follows:*

(a) *from the original contributor of funds received by the joint fundraising committee; and*

(b) *to the candidate participant to whom the funds were allocated by the joint fundraising committee."*

**Section 16.** Section 13-37-225, MCA, is amended to read:

**"13-37-225. Reports of contributions and expenditures required – electronic filing and publication.** (1) (a) Except as provided in 13-37-206, each candidate, ~~and~~ political committee, ~~and joint fundraising committee~~ shall file with the commissioner periodic electronic reports of contributions and expenditures made by or on the behalf of a candidate, ~~or~~ political committee, ~~or joint fundraising committee~~.

(b) The commissioner may, for good cause shown in a written application by a candidate, ~~or~~ political committee, ~~or joint fundraising committee~~ grant a waiver to the requirement that reports be filed electronically.

(2) The commissioner shall post on the commissioner's website:

(a) all reports filed under 13-37-226 within 7 business days of filing; and

(b) for each election, the calendar dates that correspond with the filing requirements of 13-37-226.

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

(4) A person who makes an election communication, electioneering communication, or independent expenditure is subject to reporting and disclosure requirements as provided in chapters 35 and 37 of this title."

**Section 17.** Section 13-37-226, MCA, is amended to read:

**"13-37-226. Time for filing reports.** (1) Except as provided in 13-37-206 and 13-37-225(3), a candidate shall file reports required by 13-37-225(1)(a) containing the information required by 13-37-229, 13-37-231, and 13-37-232 as follows:

(a) quarterly, due on the 5th 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 and ending in the final quarter of the year preceding the year of an election in which the candidate participates;

(b) the 20th day of March, April, May, June, August, September, October, and November in the year of an election in which the candidate participates;

(c) within 2 business days of receiving a contribution of \$100 or more if received between the 15th day of the month preceding an election in which the candidate participates and the day of the election;

(d) within 2 business days of making an expenditure of \$100 or more if made between the 15th day of the month preceding an election in which the candidate participates and the day of the election;

(e) semiannually on the 10th day of March and September, starting in the year following an election in which the candidate participates until the candidate files a closing report as specified in 13-37-228(3); and

(f) as provided by subsection (3).

(2) Except as provided in 13-37-206, 13-37-225(3), and 13-37-227, a political committee *or a joint fundraising committee* shall file reports required by 13-35-225(1)(a) containing the information required by 13-37-229, 13-37-231, and 13-37-232 as follows:

(a) quarterly, due on the 5th day following a calendar quarter, beginning with the calendar quarter in which the political committee *or the joint fundraising committee* receives a contribution or makes an expenditure after an individual becomes a candidate or an issue becomes a ballot issue, as defined in 13-1-101(6)(b), and ending in the final quarter of the year preceding the year in which the candidate or the ballot issue appears on the ballot;

(b) the 30th day of March, April, May, June, August, September, October, and November in the year of an election in which the political committee *or the joint fundraising committee* participates;

(c) within 2 business days of receiving a contribution, except as provided in 13-37-232, of \$500 or more if received between the 25th day of the month before an election in which the political committee *or the joint fundraising committee* participates and the day of the election; and

(d) within 2 business days of making an expenditure of \$500 or more that is made between the 25th day of the month before an election in which the political committee *or the joint fundraising committee* participates and the day of the election;

(e) quarterly, due on the 5th day following a calendar quarter, beginning in the calendar quarter following a year of an election in which the political committee *or the joint fundraising committee* participates until the political committee *or the joint fundraising committee* files a closing report as specified in 13-37-228(3); and

(f) as provided by subsection (3).

(3) In addition to the reports required by subsections (1) and (2), if a candidate, ~~or a political committee, or joint fundraising committee~~ participates in a special election, the candidate, ~~or political committee, or joint fundraising committee~~ shall file reports as follows:

(a) a report on the 60th, 35th, and 12th days preceding the date of the special election; and

(b) 20 days after the special election.

(4) Except as provided by 13-37-206, candidates for a local office and political committees that receive contributions or make expenditures referencing a particular local issue or a local candidate shall file the reports

specified in subsections (1) through (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign exceeds \$500.

(5) A report required by this section must cover contributions received and expenditures made pursuant to the time periods specified in 13-37-228.

(6) A political committee may file a closing report prior to the date in 13-37-228(3) and after the complete termination of its contribution and expenditure activity during an election cycle.

(7) For the purposes of this section:

(a) a candidate participates in an election by attempting to secure nomination or election to an office that appears on the ballot; and

(b) a political committee or a *joint fundraising committee* participates in an election by receiving a contribution or making an expenditure.”

**Section 18.** Section 13-37-227, MCA, is amended to read:

**“13-37-227. Comprehensive report when several candidates or issues involved.** The commissioner shall adopt rules that will permit political committees, including political parties, or *joint fundraising committees* to file copies of a single comprehensive report when they support or oppose more than one candidate or issue. The commissioner shall adopt rules under which committees filing periodic reports with the federal election commission and committees headquartered outside the state of Montana shall report in accordance with this title.”

**Section 19.** 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, or *joint fundraising committee* from the time that a person became a candidate or a political committee, as defined in 13-1-101, or a *joint fundraising committee*, as provided in [section 1], until the 5th day before the date of filing of the appropriate initial report pursuant to 13-37-226. 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. For the purposes of this subsection, the reports required under 13-37-226(1)(c), (1)(d), (2)(c), and (2)(d) are not periodic reports and must be filed as required by 13-37-226(1)(c), (1)(d), (2)(c), and (2)(d), 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, or *joint fundraising committee*. A candidate, or political committee, or *joint fundraising committee* shall file a closing report following an election in which the candidate, or political committee, or *joint fundraising committee* participates whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign unless the election is a primary election and the candidate, or political committee, or *joint fundraising committee* will participate in the general election.

(4) *If all debts and obligations are satisfied and further contributions or expenditures will not be received or made, a joint fundraising committee may file a closing report at any time.*

**Section 20.** Section 13-37-229, MCA, is amended to read:

**“13-37-229. Disclosure requirements for candidates, ballot issue committees, political party committees, and independent committees.**

(1) The reports required under 13-37-225 through 13-37-227 from candidates, ballot issue committees, political party committees, and independent committees, *and joint fundraising committees* must disclose the following information concerning contributions received:

(a) the amount of cash on hand at the beginning of the reporting period;

(b) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of \$35 or more to a candidate, or political committee, or *joint fundraising committee*, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events; *If a contribution is made by a joint fundraising committee to a participant in the joint fundraising committee, the participant shall disclose the information in this subsection (1)(b) for each contributor of the funds allocated to the participant by the joint fundraising committee.*

(c) for each person identified under subsection (1)(b), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;

(d) the total sum of individual contributions made to or for a political committee, or candidate, or *joint fundraising committee* and not reported under subsections (1)(b) and (1)(c);

(e) the name and address of each political committee, or candidate, or *joint fundraising committee* from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(f) each loan from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(g) the amount and nature of debts and obligations owed to a political committee, or candidate, or *joint fundraising committee* in the form prescribed by the commissioner;

(h) an itemized account of proceeds that total less than \$35 from a person from mass collections made at fundraising events;

(i) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (1)(b) through (1)(h) during the reporting period;

(j) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

(k) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.

(2) (a) Except as provided in subsection (2)(c), the reports required under 13-37-225 through 13-37-227 from candidates, ballot issue committees, political party committees, and independent committees, *and joint fundraising committees* must disclose the following information concerning expenditures made:

(i) the full name, mailing address, occupation, and 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;

(ii) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom an expenditure for personal services, salaries, and reimbursed expenses has been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(iii) the total sum of expenditures made by a political committee, or candidate, or *joint fundraising committee* during the reporting period; *If the expenditure is made by a joint fundraising committee, the joint fundraising committee shall report gross and net allocations to each participant.*

(iv) the name and address of each political committee, or candidate, or *joint fundraising committee* to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

(v) the name of any person to whom a loan was made during the reporting period, including the full name, mailing address, occupation, and principal place of business, if any, of that person and the full names, mailing addresses, occupations, and principal places of business, if any, of the endorsers, if any, and the date and amount of each loan;

(vi) the amount and nature of debts and obligations owed by a political committee, or candidate, or *joint fundraising committee* in the form prescribed by the commissioner;

(vii) *if a joint fundraising committee allocated contributions to a participant, the contribution information under subsections (1)(a) through (1)(c) for each contributor that contributed to the gross amount allocated by the joint fundraising committee to the participant; and*

(vii)(viii) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.

(b) 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, or *joint fundraising 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.

(c) A candidate is required to report the information specified in this subsection (2) only if the transactions involved were undertaken for the purpose of supporting or opposing a candidate.

(d) *Subsection (2)(a)(vii) only applies to the report of a joint fundraising committee."*

**Section 21. Political activity in public postsecondary institution residence hall, dining facility, or athletic facility – prohibition – exceptions – penalty.** (1) A political committee may not direct, coordinate, manage, or conduct any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts for a federal, state, local, or school election inside a residence hall, dining facility, or athletic facility operated by a public postsecondary institution.

(2) Nothing in this section may be construed as prohibiting any communications made through mail, telephone, text messages, or electronic mail inside a residence hall, dining facility, or athletic facility or any political advertising made through radio, television, satellite, or internet service. Nothing in this section may be construed as prohibiting an individual from undertaking or participating in any activity for a federal, state, local, or school election if the activity is undertaken at the individual's exclusive initiative.

(3) A person who resides in a residence hall operated by a public postsecondary institution or who regularly uses a dining hall operated by public postsecondary institution, a candidate for office in a federal, state, local,

or school election, or a political committee engaged in a federal, state, local, or school election may institute an action in any court of competent jurisdiction to prevent, restrain, or enjoin a violation of this section.

(4) A political committee that violates this section is subject to a civil penalty of \$1,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(5) For the purposes of this section, “public postsecondary institution” means:

(a) a unit of the Montana university system as described in 20-25-201; or

(b) a Montana community college defined and organized as provided in 20-15-101.

**Section 22. Judicial conflict of interest – recusal – definition.** (1) A judicial officer shall disqualify the judicial officer in a proceeding if:

(a) the judicial officer has received one or more combined contributions totaling at least one-half of the maximum amount allowable amount under 13-37-216 from a lawyer or party to the proceeding in an election within the previous 6 years; or

(b) a lawyer or party to the proceeding has made one or more contributions directly or indirectly to a political committee or other entity that engaged in independent expenditures that supported the judicial officer or opposed the judicial officer’s opponent in an election within the previous 6 years if the total combined amount of the contributions exceed at least one-half of the maximum amount that would otherwise be allowed under 13-37-216 if the contributions had been made directly to the judicial candidate.

(2) For the purposes of this section:

(a) “contribution” has the meaning provided in 13-1-101; and

(b) “judicial officer” has the meaning provided in 1-1-202.

**Section 23. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 25, part 4, and the provisions of Title 20, chapter 25, part 4, apply to [section 2].

(3) [Section 21] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 21].

(4) [Section 22] is intended to be codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [section 22].

**Section 24. Coordination instruction.** If both Senate Bill No. 224 and [this act] are passed and approved and both contain a section amending 13-37-229, then the sections amending 13-37-229 are void and 13-37-229 must be amended as follows:

**“13-37-229. Disclosure requirements for candidates, ballot issue committees, political party committees, and independent committees.** (1) The reports required under 13-37-225 through 13-37-227 from candidates, ballot issue committees, political party committees, ~~and~~ independent committees, *and joint fundraising committees* must disclose the following information concerning contributions received:

(a) the amount of cash on hand at the beginning of the reporting period;

(b) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of ~~\$35~~ *\$50* or more to a candidate, ~~or~~ political committee, *or joint fundraising committee*, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events; *If a contribution is*

*made by a joint fundraising committee to a participant in the joint fundraising committee, the participant shall disclose the information in this subsection (1)(b) for each contributor of the funds allocated to the participant by the joint fundraising committee.*

(c) for each person identified under subsection (1)(b), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;

(d) the total sum of individual contributions made to or for a political committee, or candidate, or *joint fundraising committee* and not reported under subsections (1)(b) and (1)(c);

(e) the name and address of each political committee, or candidate, or *joint fundraising committee* from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(f) each loan from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(g) the amount and nature of debts and obligations owed to a political committee, or candidate, or *joint fundraising committee* in the form prescribed by the commissioner;

(h) an itemized account of proceeds that total less than ~~35~~ \$50 from a person from mass collections made at fundraising events;

(i) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (1)(b) through (1)(h) during the reporting period; *and*

(j) the total sum of all receipts received by or for the committee or candidate during the reporting period; ~~and~~

~~(k) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.~~

(2) (a) Except as provided in subsection (2)(c), the reports required under 13-37-225 through 13-37-227 from candidates, ballot issue committees, political party committees, ~~and~~ independent committees, *and joint fundraising committees* must disclose the following information concerning expenditures made:

(i) the full name, mailing address, occupation, and 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;

(ii) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom an expenditure for personal services, salaries, and reimbursed expenses has been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(iii) the total sum of expenditures made by a political committee, or candidate, or *joint fundraising committee* during the reporting period; *If the expenditure is made by a joint fundraising committee, the joint fundraising committee shall report gross and net allocations to each participant.*

(iv) the name and address of each political committee, or candidate, or *joint fundraising committee* to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

(v) the name of any person to whom a loan was made during the reporting period, including the full name, mailing address, occupation, and principal place of business, if any, of that person and the full names, mailing addresses,

occupations, and principal places of business, if any, of the endorsers, if any, and the date and amount of each loan;

(vi) the amount and nature of debts and obligations owed by a political committee, or candidate, or *joint fundraising committee* in the form prescribed by the commissioner; and

~~(vii) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues~~

*(vii) if a joint fundraising committee allocated contributions to a participant, the contribution information under subsections (1)(a) through (1)(c) for each contributor that contributed to the gross amount allocated by the joint fundraising committee to the participant.*

(b) 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, or *joint fundraising 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.

(c) A candidate is required to report the information specified in this subsection (2) only if the transactions involved were undertaken for the purpose of supporting or opposing a candidate.

*(d) Subsection (2)(a)(vii) only applies to the report of a joint fundraising committee.*

*(3) (a) A candidate, a political committee, or a joint fundraising committee is not required to report the following expenditures under the 2-business-day reporting requirements in 13-37-226(1)(d) and 13-37-226(2)(d):*

*(i) bookkeeping expenses paid to track and ensure campaign finance compliance; and*

*(ii) payroll expenditures.*

*(b) A candidate, a political committee, or a joint fundraising committee is not relieved of the duty to report the expenditures listed in subsection (3)(a) in the next periodic report.*

*(4) A candidate is not required to report:*

*(a) contributions received from a political party committee for compensation of the personal services of another person that are rendered to the candidate if the political party committee reports the amount of contributions made to the candidate in the form of personal services; and*

*(b) tangible campaign materials such as campaign signage, literature, or photographs produced for a previous campaign or video produced for a previous campaign if the expenditures to produce the tangible materials or video were reported in a previous campaign by the candidate."*

**Section 25. 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 26. Coordination instruction.** If both Senate Bill No. 224 and [this act] are passed and approved and if Senate Bill No. 224 contains a section repealing 13-37-218, then:

(1) the section amending 13-37-218 in [this act] is void;

(2) [section 1(11)] must be deleted; and

(3) each reference to 13-37-218 in [section 1] must be deleted.

**Section 27. Effective date.** [This act] is effective July 1, 2021.

Approved May 12, 2021

**CHAPTER NO. 495**

[SB 326]

AN ACT GENERALLY REVISING LAWS RELATED TO PROVIDING FOR SPECIAL TAXES OR ASSESSMENTS BY RESOLUTION FOR IRRIGATION DISTRICT IMPROVEMENTS; PROVIDING NOTICE OF SPECIAL TAXES OR ASSESSMENTS; PROVIDING A RIGHT TO PROTEST SPECIAL TAXES OR ASSESSMENTS; PROVIDING FOR HEARINGS ON RESOLUTIONS TO LEVY SPECIAL TAXES AND ASSESSMENTS; REPEALING CERTAIN DISTRICT COURT REQUIREMENTS; AMENDING SECTIONS 85-7-2013, 85-7-2014, 85-7-2015, 85-7-2019, 85-7-2031, 85-7-2032, AND 85-7-2115, MCA; REPEALING SECTIONS 85-7-2016, 85-7-2017, AND 85-7-2018, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Levy of special taxes or assessments by resolution.**

(1) In lieu of authorizing bonds by petition or election, the board of commissioners may undertake proceedings pursuant to this part that may result in a resolution pursuant to [section 7] authorizing a levy of special taxes or assessments to repay and secure the repayment of bonds issued to pay the costs of improvements described in 85-7-2012. The costs of improvements may include the costs of bond issuance and a debt service reserve securing the repayment of bonds.

(2) A board of commissioners, if authorized by this part, shall levy and assess on all irrigable acres in the district or subdistrict benefited by the improvements an equal dollar amount for each irrigable acre to repay the bonds.

**Section 2. Resolution of intent to levy special taxes or assessments – determination of irrigable acres.** (1) If the board of commissioners determines to undertake special tax or assessment proceedings to authorize the issuance of bonds, the board shall first determine the total number of irrigable acres in the district or subdistrict pursuant to 85-7-2107 and apportionment of the costs subject to 85-7-2114.

(2) If the condition in subsection (1) is met, the board of commissioners shall pass a resolution of intention to levy special taxes or assessments.

(3) The resolution of intention must:

(a) describe the number of irrigable acres in the district or subdistrict and the number of irrigable acres that would be subject to the special taxes or assessments, and, if a subdistrict, include a map and description of the boundaries of the subdistrict;

(b) state the general character of the improvements that are desired to be made;

(c) designate the name of the engineer, if any, who is in charge of the work and the estimated costs of the improvements and of the estimated maximum principal amount of the bonds;

(d) specify that the costs of the improvements will be assessed against irrigable acres in the district or subdistrict benefited by the improvements on the basis of equal amount for each irrigable acre; and

(e) provide an estimate of the dollar amount proposed to be assessed against each irrigable acre based on the estimated maximum principal amount of the bonds.

(4) The board of commissioners may include in one proceeding under one resolution of intention the different kinds of improvement or work provided for in this part.

(5) In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it is sufficient for the board to briefly describe the work or the assessments, or both, and to refer to the resolution of intention for further information.

**Section 3. Notice of resolution of intention for levy of special taxes or assessments – hearing – exception.** (1) On passage of a resolution of intention to levy special taxes or assessments pursuant to [section 2], the board of commissioners shall publish a notice of that action 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 district or subdistrict listed in the owner's name on the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must:

(i) describe the general character of the improvements proposed to be made or acquired by purchase;

(ii) state the estimated cost of the improvements and the estimated maximum principal amount of the bonds;

(iii) describe that the debt service on the bonds will be repaid by a tax or assessment levied on the basis of equal amount for each irrigable acre;

(iv) state the dollar amount to be levied against each irrigable acre based on the estimated maximum principal amount of the bonds;

(v) state that the deadline for the receipt of protests against the proposed issuance of the bonds or levy of special taxes or assessment, or both, is 5 p.m. on the date of the end of the protest period pursuant to [section 4]; and

(vi) designate the time when and the place where the board will hear and act on all protests that may be made against the proposed issuance of the bonds or levy of the special taxes or assessments, or both.

(b) The notice must refer to the resolution on file in the office of the commission secretary for the description of the particulars. If the proposal is for the purchase of an existing improvement, the notice must state the expected cost of the proposed improvement.

(4) If no officer of the county is specifically assigned to publish or post a resolution, order, notice, or determination subject to this section, the commission secretary shall post or procure the publication or posting.

(5) An error or mistake by the person posting or procuring the publication or posting of a resolution, notice, order, or determination does not invalidate or affect the notice and protest proceedings if the error or mistake is corrected in a timely manner.

**Section 4. Right to protest levy of special taxes or assessments.**

(1) Except as provided in subsection (2), within 30 days after the first publication date of a notice of a resolution of intention, a property owner liable to be assessed for the costs of improvements proposed in the resolution of intention pursuant to [section 2] may make a written protest against the proposed issuance of the bonds or proposed levy of special taxes or assessments, or both. The protest must be in writing, identify the property owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the commission secretary, who shall endorse the date of the receipt of the protest document.

(2) If the 30-day period described in subsection (1) concludes on a holiday pursuant to 1-1-216 or a Saturday or a Sunday, the period of protest is extended to the day immediately following the holiday, Saturday, or Sunday.

(3) For the purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the irrigable acres to be assessed. The term does not include a tenant or other holder of a leasehold interest in the irrigable acres.

**Section 5. Hearing on protest.** (1) At the next regular meeting of a board of commissioners after the 30-day protest period described in [section 4], the board shall hear and rule on all protests made. Decisions of the board are final and conclusive. The board may recess this hearing from time to time.

(2) In determining whether or not sufficient protests have been made to prevent further proceedings pursuant to [section 6], irrigable acres owned by the irrigation district or other state or local government bodies must be considered the same as other irrigable acres in the irrigation district or subdistrict.

**Section 6. Sufficient protest to bar issuance of bonds and to postpone further special tax or assessment proceedings.** The board of commissioners may not authorize or hold further special tax or assessment proceedings to seek the authorization of the issuance of bonds for a period of 60 days from the date of the conclusion of the protest period if the board of commissioners finds that the protest is made by the owners of irrigable acres to be assessed for more than 50% of the costs of improvements to be financed with the bonds.

**Section 7. Resolution authorizing special taxes or assessments.** (1) If the board of commissioners finds that a protest is made by the owners of irrigable acres to be assessed for not more than 50% of the costs of improvements to be financed with the bonds, the board of commissioners following the public hearing described in [section 5] may adopt a resolution approving the levy of a special tax or assessment to repay the bonds in accordance with the resolution of intention that was introduced and passed by the board.

(2) The board may issue bonds to pay or reimburse the costs of the improvements when:

(a) sufficient protests have not been delivered to the secretary within the protest period pursuant to [section 4];

(b) protests have been found by the board to be insufficient or have been overruled;

(c) conditions for proceeding with the improvements have been or will be satisfied to the satisfaction of the board of commissioners; and

(d) the requirements of 85-7-2014 and 85-7-2015 are satisfied.

**Section 8. Adjournment of hearings on resolutions for special taxes or assessments.** If a board of commissioners hearing on proceedings on a special tax or assessment for the repayment of bonds is not held at the scheduled place and time, is adjourned, or is rescheduled, the board has not lost its power or jurisdiction to levy special taxes or assessments to repay the bonds. The board may fix a time and a place for a new or additional hearing. The board shall provide notice of the hearing by publication in a daily, semiweekly, or weekly newspaper at least 5 days before the date of the new hearing.

**Section 9. Collection of special taxes or assessments by county treasurer – delinquencies.** (1) When a resolution approving special taxes or assessments for the repayment of bonds has been certified by the board secretary, and delivered to the county clerk and recorder and the irrigation district has issued or will issue the bonds pursuant to 85-7-2014 and 85-7-2015, the county treasurer in the county in which the lot, tract, or parcel is located

shall collect the special taxes or assessments in the same manner and at the same time as taxes for general state, county, and municipal purposes are collected.

(2) A board may declare an unpaid installment of special taxes or assessments as delinquent on the adoption of an appropriate resolution. The special taxes or assessments constitute a first and prior lien on the land against which it is levied as taxes levied for state, county, and municipal purposes. The lien may be extinguished only by the payment of the special taxes or assessments, with all penalties, costs, and interest, as provided in 85-7-2021 and Title 85, chapter 7, part 20.

(3) The lien of special taxes or assessments to repay the bonds must remain on the land for a period of 8 years after the date of the final maturity of the bonds. On the delinquency of one or all installments, the whole property must be sold as other property is sold for taxes. The enforcement of the lien does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

**Section 10.** Section 85-7-2013, MCA, is amended to read:

**“85-7-2013. Majority vote, and petition, and protest requirements.**

(1) Bonds provided for in 85-7-2012 through 85-7-2015 may not be authorized or issued by or on behalf of any irrigation district organized under this chapter or by an irrigation district on behalf of a subdistrict located in the district and a contract may not be made with the United States as provided in 85-7-1906 except on:

(a) approval by a majority vote of those voting on the question at an election conducted in accordance with Title 13, chapter 1, part 5, with votes cast and counted as prescribed in 85-7-1710;

(b) receipt of a petition signed by ~~at least 60%, in number and acreage, a majority in acreage~~ of the holders of title or evidence of title to lands included within the district or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, ~~at least 60% in number and acreage a majority in acreage~~ of the holders of title or evidence of title to lands within the subdistrict;  
~~or~~

(c) receipt of a petition signed by at least 75%, in number and acreage, of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the district are situated or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 75% in number and acreage of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the subdistrict are situated; *or*

(d) *adoption of a resolution by the board of commissioners approving special taxes or assessments to repay bonds pursuant to [section 7] following a determination that a protest as provided in [section 4] by owners of assessed irrigable acres as determined by [section 2] comprises no more than 50% of the special tax or assessment proposed to pay the costs of the suggested improvements.*

(2) The petition must be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes of the bonds, have attached to it an affidavit verifying the signatures to the petition, and be filed with the secretary of the board. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of the district, the bonds may be authorized and issued in the manner provided for by 85-7-2019.

(3) In an election held for approval to allow a district or subdistrict to issue bonds or enter into a contract under this section, the voting majority must own at least 50% of the acreage included in the district or subdistrict.”

**Section 11.** Section 85-7-2014, MCA, is amended to read:

**“85-7-2014. Procedure after election, or petition, or resolution filed.** Upon an election, or the filing of the petition pursuant to 85-7-2013, or the adoption of a resolution approving the levy of a special tax or assessment under [section 7], the board of commissioners shall, by appropriate order or resolution:

(1) authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the election, or petition, or resolution adopted pursuant to [section 7];

(2) fix the numbers, denominations, and maturity or maturities of the bonds;

(3) specify the rate of interest on the bonds and whether it is payable annually or semiannually;

(4) designate the place and method of payment of the bonds and the interest on the bonds, within or outside the state of Montana;

(5) prescribe the form of the bonds; and

(6) provide for the levy of a special tax or assessment as provided in this chapter on all the lands in the district or for a levy on a subdistrict if the bonds are issued on behalf of the subdistrict, for the irrigation and benefit of which the district or subdistrict was organized and the bonds are issued or the contract is to be made, sufficient in an amount to pay the interest on and principal of the bonds when due and all amounts to be paid to the United States under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.”

**Section 12.** Section 85-7-2015, MCA, is amended to read:

**“85-7-2015. Effect of contracting with United States.** If contract is to be made with the United States as provided in 85-7-1906 and bonds are not to be deposited with the United States in connection with the contract, the board of commissioners need not authorize the issuance of bonds, or if bonds are required in addition to the contract, the commissioners may authorize bonds only for the amount needed in addition to the contract. ~~Such order or resolution shall also provide for the confirmation proceedings in the district court as provided in 85-7-2016 through 85-7-2018.”~~

**Section 13.** Section 85-7-2019, MCA, is amended to read:

**“85-7-2019. Refunding bonds.** (1) Any irrigation district may issue refunding bonds.

(2) An irrigation district may issue refunding bonds for the purpose of redeeming or paying the indebtedness or any portion of the indebtedness of the district, whether represented by existing and outstanding bonds, interest coupons, or warrants, including accrued and unpaid interest on the bonds, coupons, and warrants, and whether the indebtedness is due or not due or has or may become payable at the option of the district, by consent of the bondholders or warrant holders, or by any other legal means and whether the indebtedness is now existing or may be created, ~~and funds in the treasury of the district are not available for the payment of the indebtedness.~~ The refunding bonds may be issued in one or more series. *If the average annual interest rate of the refunding bonds is more than the average annual interest rate on the bonds being refunded or the term of the bonds being refunded is extended by the refunding bonds, a petition must be filed with the board of commissioners before proceeding with the refunding.* The petition for the refunding bonds

must be signed as required by law by ~~at least 60% in number and a majority in~~ acreage of the holders of title or evidence of title to the lands included within the district, or by ~~at least 60% in number and a majority in~~ acreage of the holders of title or evidence of title to the lands within a subdistrict if the bonds to be refunded were issued by the district on behalf of the subdistrict, and addressed to the board of directors or commissioners of the district. The petition may contain the following specifications, in addition to the matters otherwise required by law:

(a) how many series of bonds shall be issued; and

(b) the terms, conditions, and liens of the bonds and the terms and conditions upon which each of the series of bonds shall be exchanged for outstanding bonds of the district if the bonds are to be exchanged and not sold.

(3) The specifications provided for in subsection (2), when set forth in the petition, are controlling upon the board of directors or commissioners. The petitioners shall in the specifications set forth the contract of exchange to be made, with particularity. The contract may include any term, requirement, grant, transfer of property or rights, covenant, or condition considered by the petitioners to be in the best interest of the district or of the subdistrict if the bonds that are the subject of the contract were issued by the district on behalf of the subdistrict. The petition shall state that the board of directors or commissioners of the district may authorize and direct the issuance of bonds according to the specifications of the petition, make any such contract, and bind the irrigation district under the contract.”

**Section 14.** Section 85-7-2031, MCA, is amended to read:

**“85-7-2031. Amending or supplementing United States contracts – effect on indebtedness.** The board of commissioners of any irrigation district established and organized under and by virtue of the laws of Montana, whenever deemed advisable and to the interests of the district, shall have the power and authority to enter into any contract with the United States supplementing or amending any original contract with the United States, said original contract having been entered into pursuant to the provisions of 85-7-1906 and 85-7-2012 through ~~85-7-2018~~ 85-7-2015; provided, that such supplementary or amendatory contract does not increase the amount of the principal indebtedness of the district to the United States as it exists at the date of the supplementary or amendatory contract authorized under the provisions of 85-7-2012 through 85-7-2015.”

**Section 15.** Section 85-7-2032, MCA, is amended to read:

**“85-7-2032. Amending or supplementing United States contracts – petition, or election, or resolution not necessary.** If a supplementary or amendatory contract is made with the United States under this part, an election, ~~or~~ petition, ~~or~~ resolution required under 85-7-2012 through 85-7-2015 is not necessary ~~and the board of commissioners of the irrigation district is not required to proceed under 85-7-2016 through 85-7-2018 for a judicial confirmation of the making of the contract and the terms of the contract.~~ It is sufficient in the case of a contract made with the United States under this part for the board of commissioners of any irrigation district to authorize the execution of the contract by its president and secretary by appropriate resolution adopted at any regular or special meeting of the board of commissioners.”

**Section 16.** Section 85-7-2115, MCA, is amended to read:

**“85-7-2115. Objection by landowner.** If a landowner objects to the proceedings of the board in determining the irrigable area in the landowner’s own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district or subdistrict for the purposes of the proposed bond issue and the objection is

overruled by the board, the objection without further proceedings must be regarded as appealed to the district court ~~and must, with the other proceedings of the board at the meeting, be heard at the proceedings to confirm the bonds, as provided in 85-7-2016 through 85-7-2018.~~ When confirmed, the order overruling the objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement to each tract becomes final, binding, and conclusive upon the landowner and upon the district unless appealed ~~from as provided in 85-7-2018.~~"

**Section 17. Repealer.** The following sections of the Montana Code Annotated are repealed:

85-7-2016. Confirmation by district court.

85-7-2017. Hearing and procedure in the district court.

85-7-2018. District court findings and order -- appeal.

**Section 18. Codification instruction.** [Section 1 through 9] are intended to be codified as an integral part of Title 85, chapter 7, part 20, and the provisions of Title 85, chapter 7, part 20, apply to [sections 1 through 9].

**Section 19. Effective date.** [This act] is effective on passage and approval.

Approved May 12, 2021

## CHAPTER NO. 496

[SB 327]

AN ACT PROHIBITING REGULATIONS FOR WASTING OF GAME BIRDS THAT ARE MORE RESTRICTIVE THAN FEDERAL REGULATIONS; PROVIDING AN EXCEPTION FOR MIGRATORY BIRDS; AND AMENDING SECTION 87-6-205, MCA.

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

**Section 1.** Section 87-6-205, MCA, is amended to read:

**"87-6-205. Waste of game animal, game bird, or game fish.**

(1) Except as provided in subsection (3), a person responsible for the death of any game animal, game bird, or game fish suitable for food may not purposely or knowingly waste the game by:

(a) detaching or removing only the head, hide, antlers, tusks, or teeth or any or all of these parts from the carcass of a game animal;

(b) transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandoning the carcass of a game animal or any portion of the carcass suitable for food in the field.

(2) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food may not purposely or knowingly waste the game by:

(a) transporting, storing, or hanging the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposing of or abandoning any portion of the animal, bird, or fish that is suitable for food. *For migratory birds, "suitable for food" means the breast meat.*

(3) A person responsible for the death of a mountain lion, except as provided in 87-6-106, may not abandon the head or hide in the field.

(4) A person responsible for the death of a grizzly bear wastes the game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes pursuant to 87-3-131.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of a violation of this section may be fined not less than \$50 or more than \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall:

(a) 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 period; and

(b) pay restitution pursuant to 87-6-905 through 87-6-907.

(7) A person convicted of waste of game by abandonment in the field may be subject to the additional penalties provided in 87-6-901.

(8) *Regulations adopted pursuant to this section for game birds may not be more restrictive than comparable federal regulations, except as provided in subsection (2)(b)."*

Approved May 12, 2021

## CHAPTER NO. 497

[SB 357]

AN ACT GENERALLY REVISING LAWS RELATED TO TELEHEALTH SERVICES; ALLOWING HEALTH CARE PROVIDERS TO PROVIDE SERVICES BY MEANS OF TELEHEALTH; ALLOWING MEDICAID COVERAGE OF SERVICES PROVIDED BY MEANS OF TELEHEALTH; PROVIDING DEFINITIONS; CLARIFYING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-7-101, 37-7-201, 37-11-101, 37-11-105, 37-15-102, 37-15-202, 37-15-314, 37-15-315, 53-6-113, AND 53-6-155, MCA.

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

**Section 1. Telehealth services – rulemaking authority.** (1) A person licensed under this title to provide health care in the ordinary course of business or practice of a profession may provide services by means of telehealth when the use of telehealth:

(a) is appropriate for the services being provided;

(b) meets the standard of care for delivery of services; and

(c) complies with any administrative rules for telehealth adopted by the board that licenses the health care provider.

(2) A board may adopt rules establishing requirements for the use of telehealth by its licensees.

(3) (a) For the purposes of this section, “telehealth” means the use of audio, video, or other telecommunications technology or media, including audio-only communication, that is:

(i) used by a health care provider or health care facility to deliver health care services; and

(ii) delivered over a secure connection that complies with the requirements of state and federal privacy laws.

(b) The term does not include delivery of health care services by means of facsimile machines or electronic messaging alone. The use of facsimile machines and electronic messaging is not precluded if used in conjunction with other audio, video, or telecommunications technology or media.

(c) For physicians providing written certification of a debilitating medical condition pursuant to 50-46-310, the term does not include the use of

audio-only communication unless the physician has previously established a physician-patient relationship through an in-person encounter.

**Section 2. Telehealth services – requirements – limitations.**

(1) Providers enrolled in the medicaid program may provide medically necessary services by means of telehealth if the service:

(a) is clinically appropriate for delivery by telehealth as specified by the department by rule or policy;

(b) comports with the guidelines of the applicable medicaid provider manual; and

(c) is not specifically required in the applicable provider manual to be provided in a face-to-face manner.

(2) A provider shall:

(a) ensure an enrollee receiving telehealth services has the same rights to confidentiality and security as provided for traditional office visits;

(b) follow consent and patient information protocols consistent with the protocols followed for in-person visits; and

(c) comply with recordkeeping requirements established by the department by rule.

(3) Telehealth services:

(a) may be provided using secure portal messaging, secure instant messaging, telephone communication, or audiovisual communication;

(b) may not be provided in a setting or manner not otherwise authorized by law; and

(c) must be reimbursed at the same rate of payment as services delivered in person.

(4) An enrollee's residence is not reimbursable as an enrolled originating site provider.

(5) The department shall adopt rules for the provision of telehealth services, including but not limited to:

(a) billing procedures for enrolled providers;

(b) the services considered clinically appropriate for telehealth purposes;

(c) recordkeeping requirements for providers, including originating site providers; and

(d) other requirements for originating site providers, including allowable provider types, reimbursement rates, and requirements for the secure technology to be used at originating sites.

(6) Nothing in this section may be construed as altering the scope of practice of any enrolled provider delivering services by means of telehealth.

**Section 3.** Section 37-7-101, MCA, is amended to read:

**“37-7-101. Definitions.** As used in 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) Except as provided in 37-7-105, 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.

(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.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "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.

(7) "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.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "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.

(10) "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.

(11) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

(12) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(13) "Device" has the same meaning as defined in 37-2-101.

(14) "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.

(15) "Distribute" or "distribution" means the sale, purchase, trade, delivery, handling, storage, or receipt of a drug or device and does not include administering or dispensing a prescription drug, pursuant to section 353(b)(1), or a new animal drug, pursuant to section 360b(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(16) "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 (16)(a), (16)(b), or (16)(c).

(17) "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.

(18) "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.

(19) "FDA" means the United States food and drug administration.

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

(21) (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.

(22) "Health information system" means one of the following systems used to compile and manage patient health care information:

- (a) an electronic health record system;
- (b) a health information exchange approved by the board;
- (c) a pharmacy dispensing system; or
- (d) a system defined by the board by rule.

(23) "Hospital" has the meaning provided in 50-5-101.

(24) "Immunization-certified pharmacist" means a pharmacist who:

(a) has successfully completed an immunization delivery course of training that is approved by the accreditation council for pharmacy education or by an authority approved by the board and that, at a minimum, includes instruction in hands-on injection technique, clinical evaluation of indications and contraindications of immunizations, storage and handling of immunizations, and documentation and reporting; and

(b) holds a current basic cardiopulmonary resuscitation certification issued by the American heart association, the American red cross, or another recognized provider.

(25) "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.

(26) "Long-term care facility" has the meaning provided in 50-5-101.

(27) "Manufacturing" means the production, preparation, 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.

(28) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(29) "Outsourcing facility" means a facility at one geographic location or address that:

- (a) engages in compounding of sterile drugs;
- (b) has elected to register as an outsourcing facility with FDA; and
- (c) complies with all the requirements of section 353b of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(30) "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 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

(31) "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.

(32) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(33) "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 a disease process.

(34) "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."

(35) "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.

(36) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(37) "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.

(38) "Practice of pharmacy" means:

- (a) interpreting, evaluating, and implementing prescriber orders;
- (b) administering drugs and devices pursuant to a collaborative practice agreement, except as provided in 37-7-105, 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.

(39) "Practice ~~telepharmacy~~ *pharmacy by means of telehealth*" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(40) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(41) "Prescriber" has the same meaning as provided in 37-7-502.

(42) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(43) "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.

(44) "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.

(45) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(46) "Registry" means the prescription drug registry provided for in 37-7-1502.

(47) "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.

(48) "Wholesale" means a sale for the purpose of resale."

**Section 4.** 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, including outsourcing facilities, as well as for the 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 distributors;

(iv) third-party logistics providers as defined in 37-7-602; and

(v) 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;

(f) issuing certificates of "certified pharmacy" under this chapter;

(g) establishing and collecting license and registration fees;

(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)(h) may not be construed to expand on the definition of the practice of pharmacy.

(i) establishing a medical assistance 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 illness or chronic physical illness. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.

(j) making rules for the conduct of its business;

(k) performing other duties and exercising other powers as this chapter requires; and

(l) 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~~ *pharmacy by means of telehealth* 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 5.** Section 37-11-101, MCA, is amended to read:

**“37-11-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Board” means the board of physical therapy examiners provided for in 2-15-1748.

(2) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) “Hearing” means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(4) “Physical therapist” or “physiotherapist” means a person who practices physical therapy.

(5) “Physical therapist assistant” or “assistant” means a person who:

(a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;

(b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and

(c) is supervised by a licensed physical therapist as described in 37-11-105.

(6) “Physical therapist assistant student” means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.

(7) “Physical therapy” means the evaluation, treatment, and instruction of human beings, in person or through telemedicine, to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(8) “Physical therapy aide” or “aide” means a person who aids in the practice of physical therapy, whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.

(9) “Physical therapy practitioner”, “physical therapy specialist”, “physiotherapy practitioner”, or “manual therapists” are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(10) “Physical therapy student” or “physical therapy intern” means an individual who is enrolled in an accredited physical therapy curriculum, who, as part of the individual’s professional, educational, and clinical training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as described in 37-11-105.

(11) “~~Telemedicine Telehealth~~” has the meaning provided in ~~33-22-138~~ [section 1].

(12) “Topical medications” means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law.”

**Section 6.** Section 37-11-105, MCA, is amended to read:

**“37-11-105. Supervision of physical therapist assistant, physical therapy aide, physical therapy student, or physical therapist assistant student.** (1) A physical therapist assistant shall practice under the supervision of a licensed physical therapist who is responsible for and participates in a patient’s care. This supervision requires the licensed physical therapist to make an onsite visit or a visit by means of ~~telemedicine~~ *telehealth* to the client at least once for every six visits made by the assistant or once every 2 weeks, whichever occurs first.

(2) A licensed physical therapist may not concurrently supervise more than two full-time assistants or the equivalent. This supervision does not require the presence of the assistant.

(3) A physical therapy aide shall practice under the onsite supervision of a licensed physical therapist or a licensed assistant. A licensed assistant may not concurrently supervise more than one full-time aide or the equivalent. A licensed physical therapist may not concurrently supervise more than four aides or the equivalent or two assistants and two aides or the equivalent.

(4) A physical therapy student or physical therapist assistant student shall practice with the onsite supervision of a licensed physical therapist.”

**Section 7.** Section 37-15-102, MCA, is amended to read:

**“37-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Audiologist” means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words “audiologist”, “audiology”, “audiometrist”, “audiometry”, “audiological”, “audiometrics”, “hearing clinician”, “hearing clinic”, “hearing therapist”, “hearing therapy”, “hearing center”, “hearing aid audiologist”, or any similar title or description of services.

(2) “Audiology aide or assistant” means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(3) “Board” means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

(4) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(5) “Facilitator” means a trained individual who is physically present with the patient and facilitates ~~telepractice~~ *telehealth* at the direction of an audiologist or speech-language pathologist. A facilitator may be but is not limited to an audiology or speech-language pathology aide or assistant.

(6) “Patient” means a consumer of services from an audiologist or speech-language pathologist, including a consumer of those services provided through ~~telepractice~~ *telehealth*.

(7) “Practice of audiology” means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule and includes the selling, dispensing, and fitting of hearing aids.

(8) “Practice of speech-language pathology” means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

(9) “Speech-language pathologist” means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions

that the person directly or indirectly performs the words “speech pathologist”, “speech pathology”, “speech correctionist”, “speech corrections”, “speech therapist”, “speech therapy”, “speech clinician”, “speech clinic”, “language pathologist”, “language pathology”, “voice therapist”, “voice therapy”, “voice pathologist”, “voice pathology”, “logopedist”, “logopedics”, “communicologist”, “communicology”, “aphasiologist”, “aphasiology”, “phoniatrist”, “language therapist”, “language clinician”, or any similar title or description of services or functions.

(10) “Speech-language pathology aide or assistant” means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

(11) ~~“Telepractice” means the practice of audiology or speech-language pathology by an audiologist or speech-language pathologist at a distance through any means, method, device, or instrumentality for the purposes of assessment, intervention, and consultation.~~

(11) *“Telehealth” has the meaning provided in [section 1].*”

**Section 8.** Section 37-15-202, MCA, is amended to read:

**“37-15-202. Powers and duties of board and department.** (1) The board shall:

- (a) administer, coordinate, and enforce the provisions of this chapter;
- (b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of applicants;
- (c) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;
- (d) adopt rules, including but not limited to those governing ethical standards of practice or standards for ~~telepractice~~ *telehealth* under this chapter;
- (e) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;
- (f) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses for the prosecution;

(g) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, are prima facie evidence of the validity of the documents.

(3) The board may make rules that are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law.”

**Section 9.** Section 37-15-314, MCA, is amended to read:

**“37-15-314. Telepractice — authorization — licensure Telehealth — audiology aides and assistants.** (1) An audiologist or speech-language pathologist who is licensed under and meets the requirements of this chapter may engage in ~~telepractice~~ *telehealth* in Montana without obtaining a separate or additional license from the board.

(2) Except as provided in 37-15-103, an audiologist or speech-language pathologist who is not a resident of Montana and who is not licensed under this chapter may not provide services to patients in Montana through ~~telepractice~~

*telehealth* without first obtaining a license from the board in accordance with this part.

(3) An audiology aide or assistant or a speech-language pathology aide or assistant may not engage in *telepractice telehealth as defined in [section 1]*. ~~This section does not prohibit an audiology aide or assistant or a speech-language pathology aide or assistant from serving but may serve as a facilitator for telehealth services.~~

**Section 10.** Section 37-15-315, MCA, is amended to read:

**“37-15-315. Scope of telepractice telehealth – requirements.**

(1) The quality of services provided through *telepractice telehealth* must be equivalent to the quality of audiology or speech-language pathology services that are provided in person and must conform to all existing state, federal, and institutional professional standards, policies, and requirements for audiologists and speech-language pathologists.

(2) Technology used to provide *telepractice telehealth*, including but not limited to equipment, connectivity, software, hardware, and network compatibility, must be appropriate for the service being delivered and must address the unique needs of each patient. Audio and video quality utilized in *telepractice telehealth* must be sufficient to deliver services that are equivalent to services that are provided in person. A person providing *telepractice telehealth* services is responsible for calibrating clinical instruments in accordance with standard operating procedures and the manufacturer’s specifications.

(3) A person providing *telepractice telehealth* services shall comply with all state and federal laws, rules, and regulations governing the maintenance of patient records, including maintaining patient confidentiality and protecting sensitive patient data.

(4) A person providing *telepractice telehealth* services shall conduct an initial assessment of each patient’s candidacy for *telepractice telehealth*, including the patient’s behavioral, physical, and cognitive abilities to participate in services provided through *telepractice telehealth*. *Telepractice Telehealth* may not be provided only through written correspondence.

(5) At a minimum, a person providing *telepractice telehealth* services shall provide a notice of *telepractice telehealth* services to each patient and, if applicable, the patient’s guardian, caregiver, or multidisciplinary team. The notification must provide that a patient has the right to refuse *telepractice telehealth* services and has options for service delivery and must include instructions on filing and resolving complaints.”

**Section 11.** Section 53-6-113, MCA, is amended to read:

**“53-6-113. Department to adopt rules.** (1) The department shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and that may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules that are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

(a) the availability of appropriated funds;  
(b) the actual cost of services;  
(c) the quality of services;  
(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may:

(a) deliver or direct the delivery of particular services; *and*

(b) *deliver services by means of telehealth in accordance with [section 2].*

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) (a) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program, including the medicaid program provided for in 53-6-195. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.

(b) The department may not apply financial criteria below \$15,000 for resources other than income in determining the eligibility of a child under 19 years of age for poverty level-related children's medicaid coverage groups, as provided in 42 U.S.C. 1396a(l)(1)(B) through (l)(1)(D).

(c) The department may not apply financial criteria below \$15,000 for an individual and \$30,000 for a couple for resources other than income in determining the eligibility of individuals for the medicaid program for workers with disabilities provided for in 53-6-195.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care.

(9) Subject to subsection (6), the department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature.

(10) Unless required by federal law or regulation, the department may not adopt rules that exclude a child from medicaid services or require prior authorization for a child to access medicaid services if the child would be eligible for or able to access the services without prior authorization if the child was not in foster care."

**Section 12.** Section 53-6-155, MCA, is amended to read:

**“53-6-155. Definitions.** As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) “Abuse” means conduct by an applicant, recipient, provider, or other person involving disregard of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical assistance program when the disregard or failure results or may result in an incorrect determination that a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments to which the provider is not entitled.

(2) “Applicant” means a person:

(a) who has submitted an application for determination of medicaid eligibility to a medicaid agency on the person’s own behalf or on behalf of another person; or

(b) on whose behalf an application has been submitted.

(3) “Benefit” means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(4) “Claim” means a communication, whether in oral, written, electronic, magnetic, or other form, that is used to claim specific services or items as payable or reimbursable under the medicaid program or that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program. The term includes any documents submitted as part of or in support of the claim.

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

(6) “Document” means any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.

(7) “Fraud” means any conduct or activity prohibited by statute, regulation, or rule involving purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not limited to any conduct or omission under the medicaid program that would constitute a criminal offense under Title 45, chapter 6 or 7.

(8) “Medicaid” means the Montana medical assistance program established under Title 53, chapter 6.

(9) “Medicaid agency” means any agency or entity of state, county, or local government that administers any part of the medicaid program, whether under direct statutory authority or under contract with an authorized agency of the state or federal government. The term includes but is not limited to the department, the department of corrections, local offices of public assistance, and other local and state agencies and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims processing or payment, utilization review, case management, provider certification, investigation, or other administration of the medicaid program.

(10) “Misappropriation of patient property” means exploitation, deliberate misplacement, or wrongful use or taking of a patient’s property, whether temporary or permanent, without authorization by the patient or the patient’s designated representative. Misappropriation of patient property includes but is not limited to any conduct with respect to a patient’s property that would constitute a criminal offense under Title 45, chapter 6, part 3.

(11) “Patient abuse” means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient.

Patient abuse includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under Title 45, chapter 5.

(12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness when an omission is not caused by factors beyond the person's control or by good faith errors in judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under 45-5-208.

(13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the medical assistance program established under this part.

(14) (a) "*Originating site provider*" means an enrolled provider who is operating a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., and assisting an enrollee with the technology necessary for a telehealth visit.

(b) An originating site provider is not required to participate in the delivery of the health care service.

~~(14)~~(15) "Recipient" means a person:

(a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the person actually has received any benefits; or

(b) who actually receives medicaid benefits, whether or not determined eligible.

~~(15)~~(16) (a) "Records" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

(i) pertaining to the provision of treatment, care, services, or items to a recipient;

(ii) pertaining to the income and expenses of the provider; or

(iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or reimbursement under the medicaid program.

(b) The term includes all records and documents, regardless of whether the records are required by medicaid laws, regulations, rules, or policies to be made and maintained by the provider.

(17) (a) "*Telehealth*" means the use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across distance, including but not limited to the use of secure portal messaging, secure instant messaging, audiovisual communications, and audio-only communications.

(b) The term includes both clinical and nonclinical services."

**Section 13. Codification instruction.** (1) [Section 1] 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 1].

(2) [Section 2] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 2].

**Section 14. Coordination instruction.** If both House Bill No. 210 and [this act] are passed and approved and both bills contain a section that amends 37-15-314, then the sections amending 37-15-314 are void and 37-15-314 must be amended as follows:

**“37-15-314. Telepractice — authorization — licensure Telehealth — authorization — assistants.** (1) An audiologist, or speech-language pathologist, *speech-language pathology assistant, or audiology assistant* who is licensed under and meets the requirements of this chapter may engage in *telepractice telehealth* in Montana without obtaining a separate or additional license from the board.

(2) Except as provided in 37-15-103, an audiologist, or speech-language pathologist, *speech-language pathology assistant, or audiology assistant* who is not a resident of Montana and who is not licensed under this chapter may not provide services to patients in Montana through *telepractice telehealth* without first obtaining a license from the board in accordance with this part.

(3) An audiology aide or assistant or a speech-language pathology aide or assistant may not engage in *telepractice telehealth*. ~~This section does not prohibit an audiology aide or assistant or a speech-language pathology aide or assistant from serving as a facilitator or provide other services as directed by a speech-language pathologist or audiologist that otherwise comply with board rules for scope of practice by speech-language pathology assistants and audiology assistants.”~~

Approved May 12, 2021

## CHAPTER NO. 498

[SB 365]

AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS; PROVIDING FOR DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, A SOBRIETY MONITORING PROGRAM, FORFEITURE PROVISIONS, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, A PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE, OPEN CONTAINER VIOLATIONS, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211, MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408, 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Definitions.** As used in [sections 1 through 17], unless the context requires otherwise and unless a different meaning plainly is required, the following definitions apply:

(1) “Aggravated driving under the influence” means a person is in violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)] and:

(a) the person’s alcohol concentration, as shown by analysis of the person’s blood, breath, or other bodily substance, is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of driving under the influence, including a violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence, or a similar offense under previous laws of this state or the laws of another state; or

(d) the person refuses to give a breath sample as required in [section 8] and the person's driver's license or privilege to drive was suspended, canceled, or revoked under the provisions of an implied consent statute.

(2) "Alcoholic beverage" means a compound produced for human consumption as a drink that contains 0.5% or more of alcohol by volume.

(3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.

(4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(5) "Camper" has the meaning provided in 61-1-101.

(6) "Commercial motor vehicle" has the meaning provided in 61-1-101.

(7) "Drug" means any substance that when taken into the human body can impair a person's ability to operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).

(8) "DUI court" means any court that has established a special docket for handling cases involving persons convicted under [section 3 or 4] and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to [section 5] and to end the participant's criminal behavior associated with the use of alcohol or drugs.

(9) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.

(10) "Motor home" has the meaning provided in 61-1-101.

(11) "Motor vehicle" has the meaning provided in 61-1-101.

(12) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

(13) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.

(14) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(15) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle.

**Section 2. Driving under influence.** (1) A person commits the offense of driving under the influence if the person drives or is in actual physical control of:

(a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under the influence of alcohol, any drug, or a combination of alcohol and any drug;

(b) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or more;

(c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more; or

(e) a vehicle within this state when the person is under 21 years of age at the time of the offense while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.02 or more.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood, breath, or other bodily substance drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol;

(b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person; and

(c) if there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(3) The provisions of subsection (2) do not limit the introduction of any other competent evidence bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(4) Each municipality in this state is given authority to enact this section, with the word "state" changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and the imposition of the fines and penalties provided in the ordinance.

(5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

(6) When the same acts may establish the commission of an offense under subsection (1), a person charged with the conduct may be prosecuted for a violation of another relevant subsection under subsection (1). However, the person may be convicted of only one offense under this section or of a similar offense under previous laws of this state.

**Section 3. Penalty for driving under influence -- first through third offenses.** (1) (a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of [section 2(1)(a)] shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000;

(ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less

than 14 days or more than 1 year and a fine of not less than \$2,400 or more than \$4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in [section 1], the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of [section 2(1)(b), (1)(c), or (1)(d)] shall be punished as follows:

(i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than \$1,200 or more than \$2,000;

(ii) for a second violation, by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than \$2,400 or more than \$4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than \$2,500 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than \$5,000 or more than \$10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], or

a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in [section 1], the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(3) (a) A person convicted of a violation of [section 2(1)(e)] shall be punished as follows:

(i) Upon a first conviction under this section, a person shall be punished by a fine of not less than \$100 or more than \$500.

(ii) Upon a second conviction under this section, a person shall be punished by a fine of not less than \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

(iii) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(iv) In addition to the punishment provided in this section, regardless of disposition:

(A) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [section 5] as ordered by the court; and

(B) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the offense, has completed at least 30 days of the suspension period.

(b) A conviction under this section may not be counted as a prior offense or conviction under [sections 3, 4, and 7].

(4) (a) A person convicted of a violation under [section 2] charged as aggravated driving under the influence, as defined in [section 1], shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 2 days or more than 1 year and by a fine of \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1 year and by a fine of \$2,000;

(ii) for a second violation, by imprisonment for not less than 15 days or more than 1 year and by a fine of \$2,500, except that if one or more passengers

under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by a fine of \$5,000; or

(iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year and by a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or more than 1 year and by a fine of \$10,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(d) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(5) In addition to the punishment provided in this section, regardless of disposition, the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [section 5] as ordered by the court.

(6) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5.

**Section 4. Penalty for driving under influence – fourth and subsequent offenses.** (1) (a) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-106 or any combination of three or more convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in [section 2(1)(a)], is guilty of a felony and shall be punished by:

(i) being sentenced to the department of corrections for a term of not less than 13 months or more than 2 years for placement in either an appropriate correctional facility or a program, followed by a consecutive term of 5 years to the Montana state prison or the Montana women's prison, all of which must be suspended, and a fine of not less than \$5,000 or more than \$10,000; or

(ii) being sentenced to a term of up to 5 years in an appropriate treatment court program, with required completion, and a fine of not less than \$5,000

or more than \$10,000. If sentenced under this alternative, the person may be entitled to a suspended sentence but is not eligible for a deferred imposition of sentence.

(b) Regarding the sentence provided for in subsection (1)(a)(i):

(i) the imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole;

(ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by the department of corrections;

(iii) following initial placement of a defendant in a residential alcohol treatment program facility, the department of corrections may, at its discretion, place the offender in another facility or program;

(iv) the court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the 13-month to 2-year term must be served on probation with the conditions that:

(A) the person abide by the standard conditions of probation promulgated by the department of corrections;

(B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section does so;

(C) the person may not frequent an establishment where alcoholic beverages are served;

(D) the person may not consume alcoholic beverages;

(E) the person may not operate a motor vehicle unless authorized by the person's probation officer;

(F) the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(G) the person submit to random or routine drug and alcohol testing; and

(H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system; and

(v) the sentencing judge may impose on the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(A) payment of a fine as provided in 46-18-231;

(B) payment of costs as provided in 46-18-232 and 46-18-233;

(C) payment of costs of assigned counsel as provided in 46-8-113;

(D) community service;

(E) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(F) any combination of the restrictions or conditions listed in subsections (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who was previously placed in a residential alcohol treatment program under subsection (1)(a)(i), whether or not the person successfully completed the program, and who has also been convicted under either 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [section 2(1)(a)], shall be

punished by being sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or being fined an amount of not less than \$5,000 or more than \$10,000, or both.

(3) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to a person sentenced under this section.

(4) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5.

**Section 5. Driving under influence – assessment, education, and treatment required.** (1) In addition to the punishments provided in [sections 3 and 4], regardless of disposition, a defendant convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state shall complete a chemical dependency assessment and:

(a) for a first conviction, except as provided in subsection (8)(b), a chemical dependency education course; and

(b) for a second or subsequent conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under [section 4(1)(a)(i)], or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. Approved programs must be evidence-based programs. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment and may use health insurance to cover the costs when possible.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. The assessment must conform to quality standards required by the department of public health and human services. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. The rules must include evidence-based treatment programs or courses approved by the department that are likely to reduce recidivism. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in

this subsection, the court shall order an appropriate level of treatment based on the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an open meeting, as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) (a) Chemical dependency treatment must be ordered for a first-time or second-time offender convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, upon a finding of moderate or severe alcohol or drug use disorder made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also be required to attend a chemical dependency education course.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under [section 3] and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year.

**Section 6. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program.** (1) For a person convicted of a first offense of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, in addition to the punishments listed in [section 3], the court may, regardless of disposition and if a probationary license is recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or the suspension was under [section 8] or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, in addition to the punishments listed in [section 2] and [section 3], the court shall require the person:

(a) to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program and to pay the fees associated with the program;

(b) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under [section 17].

(i) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(ii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

**Section 7. Driving under influence – conviction defined – place of imprisonment – home arrest – exceptions – deferral of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in [sections 1 through 4], “conviction” means:

(i) a final conviction, as defined in 45-2-101, in this state, in another state, or on a federally recognized Indian reservation;

(ii) a forfeiture, which has not been vacated, of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation; or

(iii) a conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 10 years have elapsed between the commission of the present offense and a previous conviction unless the offense is the offender's third or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, and as otherwise defined in subsection (1)(a) may be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under [section 2].

(d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred while the person was operating a vehicle in violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)],

an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and a previous conviction for a violation of 45-5-205 or 45-5-628(1)(e) may also be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under [section 2].

(2) Except as provided in [section 4], the court may order that a term of imprisonment imposed under [section 3 or 4] be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and may require that the defendant follow the rules of the facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in [section 3] concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under [section 3] be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under [section 3 or 4].

(5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under [section 3] for a violation of [section 2].

**Section 8. Implied consent – blood or breath tests for alcohol, drugs, or both – refusal to submit to test – administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test of the person's breath for the purpose of estimating the person's alcohol concentration.

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of [section 11(5)].

(d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the peace officer has particularized suspicion to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under the influence as provided in [section 2] or an offense that meets the definition of aggravated driving under the influence in [section 1];

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of [section 2(1)(e)]; or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in [section 2], and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in [section 2], and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in [section 2] and meets the definition of aggravated driving under the influence in [section 1].

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in [section 9] must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of [section 2] or an offense meeting the definition of aggravated driving under the influence in [section 1], and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, or driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

(b) Upon the person's refusal to provide the breath, blood, urine, or other bodily substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

(c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in [section 16].

(ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as provided in [section 9].

(iii) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(5) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(6) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and [section 11(6)].

**Section 9. Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the arrest was made and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) The court shall take testimony, examine the facts of the case, and determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation based on no other issues than:

(a) whether a peace officer had a basis for requesting a test or tests as set forth in [section 8], and

(b) whether the person refused to submit to one or more tests designated by the peace officer.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators.

**Section 10. Evidence admissible – conditions of admissibility.**

(1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of [section 2(1)(a)] based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under [section 11(1)]; and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under [section 8], whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

**Section 11. Administration of tests.** (1) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated [section 2], meets the definition of aggravated driving under the influence as defined in [section 1], or has violated 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to

a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301.

**Section 12. Ignition interlock device – assisting in starting and operating – circumventing – penalty.** (1) It is unlawful for a person who is subject to a restriction under [section 6] to operate a vehicle that is not equipped with an ignition interlock device.

(2) A person may not knowingly assist a person who is restricted to the use of an ignition interlock device to start and operate the restricted person's vehicle.

(3) A person may not knowingly circumvent the operation of an ignition interlock device.

(4) A person convicted of a violation of this section shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months or both.

(5) This section does not apply if:

(a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(b) the person subject to the restriction does not operate the vehicle.

**Section 13. Department rules regarding ignition interlock devices – ignition interlock device provider requirements.** (1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

(2) The department's rules must be based on federal standards issued for similar devices.

(3) An ignition interlock device that is approved by the department must also:

(a) be designed so it does not impede safe operation of the vehicle;

(b) correlate well with the level established for alcohol impairment;

(c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;

(d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;

(e) resist tampering and show evidence of tampering if it is attempted;

(f) be difficult to circumvent;

(g) minimize inconvenience of a sober user;

(h) operate reliably over the range of automobile environments and in connection with various manufacturing standards; and

(i) be manufactured by a person who is adequately insured for product liability.

(4) An ignition interlock device provider shall include in any lease agreement for an ignition interlock device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.

**Section 14. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.** (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in or on a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

(a) in a locked glove compartment or storage compartment;

(b) in a motor vehicle trunk or luggage compartment or rack, or in a truck bed or cargo compartment;

(c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or

(e) in the immediate possession of a passenger:

(i) of a bus, taxi, or limousine that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

**Section 15. Suspension of imprisonment sentence for DUI court participation.** (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under [section 3], except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

**Section 16. Mandatory suspension of license following certain implied consent action.** (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to [section 8], an individual has refused a test or tests of the person's blood, breath, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under [section 9].

**Section 17. Forfeiture procedure.** (1) A motor vehicle forfeited under [section 6] must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-207 through 44-12-211 must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) (a) For purposes of 44-12-213, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(4) Actions the court may take under 44-12-212(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.

**Section 18.** Section 23-2-535, MCA, is amended to read:

**“23-2-535. Alcohol concentration standards – evidence admissible – administration of tests.** (1) The inferences contained in ~~61-8-401(4)~~ *[section 2]* apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol in a person at the time of the act alleged, as shown by analysis of the person’s blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person’s blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in ~~61-8-405~~ *[section 11]* and the definition of alcohol concentration provided in ~~61-8-407~~ *[section 1]* apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term “under the influence” has the meaning provided in ~~61-8-401(3)~~ *[section 1].”*

**Section 19.** Section 44-4-1205, MCA, is amended to read:

**“44-4-1205. Authority of court to order participation in sobriety and drug monitoring program – probationary license – imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.

(b) If an individual convicted of the offense of aggravated driving under the influence in violation of ~~61-8-465~~ *as defined in [section 1]*, a second or subsequent offense of driving under the influence in violation of ~~61-8-401~~ *[section 2]*, or a second or subsequent offense of driving with excessive alcohol concentration in violation of ~~61-8-406~~ *[section 2(1)(b), (1)(c), or (1)(d)]* has been required to participate in the sobriety program, the court may, upon the individual’s obtaining proof of insurance pursuant to 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver’s license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual is required to complete a certain portion of a suspension period before a probationary license may be issued.

(c) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual’s noncompliance and direct the department to withdraw the individual’s probationary driver’s license and reinstate the remainder of the suspension period provided in 61-5-208.

(2) Upon an offender’s participation in the sobriety program and payment of the fees required by 44-4-1204:

(a) the court may condition any bond or pretrial release for an individual charged with a violation of ~~61-8-465~~ *aggravated driving under the influence as defined in [section 1]*, a second or subsequent violation of ~~61-8-401 or 61-8-406~~ *[section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)]* or *aggravated driving under the influence as defined in [section 1]*, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of a violation of ~~61-8-465~~ *aggravated driving under the influence as defined in [section 1]*, a second or subsequent violation of ~~61-8-401 or 61-8-406~~ *[section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)]* or *aggravated driving under the influence as defined in [section 1]*, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(c) the board of pardons and parole may condition parole for a violation of ~~61-8-465~~ *aggravated driving under the influence as defined in [section 1]*, a second or subsequent violation of ~~61-8-401 or 61-8-406~~ *[section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)]* or *aggravated driving under the influence as defined in [section 1]*, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

(d) the department of corrections may establish conditions for conditional release for a violation of ~~61-8-465~~ *aggravated driving under the influence as defined in [section 1]*, a second or subsequent violation of ~~61-8-401 or 61-8-406~~ *[section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)]* or *aggravated driving under the influence as defined in [section 1]*, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.

(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute.

(4) A person is eligible to participate in and a court may compel a person to participate in a sobriety program if the person:

(a) is charged with violating ~~61-8-465~~ *aggravated driving under the influence as defined in [section 1]*; or

(b) (i) is charged with or has been convicted of violating ~~61-8-401 or 61-8-406~~ *[section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)]* or *aggravated driving under the influence as defined in [section 1]*; and

(ii) at any time in the 10 years preceding the date of the current charge or conviction:

(A) has been convicted in this state of a violation of ~~61-8-401, 61-8-406, or 61-8-465~~ *[section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)]* or *aggravated driving under the influence as defined in [section 1]*;

(B) has been convicted of a violation of a statute or regulation in another state or on a federally recognized Indian reservation that is similar to ~~61-8-401, 61-8-406, or 61-8-465~~ *[section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)]* or *aggravated driving under the influence as defined in [section 1]*; or

(C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation for a charge of violating ~~61-8-401, 61-8-406, 61-8-465~~ *[section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)]* or *aggravated driving under the influence as defined in [section 1]*, or a similar statute or regulation and the forfeiture has not been vacated.

(5) As used in this section, "conviction" has the meaning provided in 45-2-101."

**Section 20.** Section 45-5-106, MCA, is amended to read:

**“45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being while the person is operating a vehicle in violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2].

(2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as described in 45-5-102(1)(b).

(3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed \$50,000, or both. Imposition of a sentence may not be deferred.”

**Section 21.** Section 45-5-205, MCA, is amended to read:

**“45-5-205. Negligent vehicular assault – penalty.** (1) A person who negligently operates a vehicle, other than a bicycle as defined in 61-8-102, while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in ~~61-8-401(1)~~ [section 2], and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed \$10,000 or incarcerated for a term not to exceed 10 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed.”

**Section 22.** Section 45-5-207, MCA, is amended to read:

**“45-5-207. Criminal endangerment – penalty.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A high blood alcohol concentration, ~~as provided in 61-8-407,~~ alone is not sufficient to support a criminal endangerment charge.

(3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) *As used in this section, “alcohol concentration” has the meaning provided in [section 1].*”

**Section 23.** Section 45-5-628, MCA, is amended to read:

**“45-5-628. Criminal child endangerment.** (1) A person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age by:

(a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;

(b) placing a child in the physical custody of another who the person knows has previously purposely or knowingly caused bodily injury to a child;

(c) placing a child in the physical custody of another who the person knows has previously committed an offense against the child under 45-5-502 or 45-5-503;

(d) manufacturing or distributing dangerous drugs in a place where a child is present;

(e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-465~~ [section 2] or committing aggravated driving under the influence as defined in [section 1] with a child in the vehicle; or

(f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive.

(2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the other person's custody pursuant to a court order.

(3) A person convicted of the offense of criminal child endangerment 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) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition."

**Section 24.** Section 46-16-130, MCA, is amended to read:

**"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the period.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

(3) Except as provided in 46-1-1104 and 46-1-1204, after a charge has been filed, a deferral of prosecution may be entered into only after the prosecutor provides notice to the court.

(4) A prosecution for a violation of ~~61-8-401, 61-8-406, 61-8-410, 61-8-411, or 61-8-465~~ [section 2] or aggravated driving under the influence as defined in [section 1] may not be deferred."

**Section 25.** 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 years 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:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(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;

(iv) commitment of:

(A) an offender not referred to in subsection (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)(b), and 45-5-625(4); or

(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;

(v) 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;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(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 on 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) 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 and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, 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) participation in a day reporting program provided for in 53-1-203;
  - (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of ~~61-8-465~~ *aggravated driving under the influence as defined in [section 1]*, a ~~second or subsequent~~ violation of ~~61-8-401, 61-8-406, or 61-8-411~~ *[section 2]*, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;
  - (o) participation in a restorative justice program approved by court order and payment of a participation fee of up to \$150 for program expenses if the program agrees to accept the offender;
  - (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;
  - (q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or
  - (r) any combination of the restrictions or conditions listed in this subsection (4).
- (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) (a) Except as provided in subsection (6)(b), 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.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(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.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

**Section 26.** Section 46-18-236, MCA, is amended to read:

**"46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) \$15 for each misdemeanor charge;

(b) the greater of \$20 or 10% of the fine levied for each felony charge; and

(c) an additional \$50 for each misdemeanor and felony charge under Title 45, 61-8-401, 61-8-406, or 61-8-411 or [section 2].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

**46-18-236. (Effective July 1, 2021) Imposition of charge upon conviction or forfeiture -- administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) \$15 for each misdemeanor charge;

(b) the greater of \$20 or 10% of the fine levied for each felony charge; and

(c) an additional \$50 for each misdemeanor and felony charge under Title 45, ~~61-8-401, 61-8-406, or 61-8-411~~ or *section 2*.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of

Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

**Section 27.** Section 50-46-320, MCA, is amended to read:

**"50-46-320. Limitations of act.** (1) This part does not permit:

(a) any individual, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana or manufacture marijuana concentrates or marijuana-infused products for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in this part may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a property owner to allow a tenant who is a registered cardholder, provider, marijuana-infused products provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.

(5) Nothing in this part may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in this part may be construed to allow a provider, marijuana-infused products provider, or employee of a licensee to use marijuana or to prevent criminal prosecution of a provider, marijuana-infused products provider, or employee of a licensee who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the individual to provide a sample of the individual's blood for testing pursuant to the provisions of ~~61-8-405~~ [section 11]. An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml may be charged with a violation of ~~61-8-401 or 61-8-411~~ [section 2(1)(a) or (1)(e)].

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2]. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), or (1)(d)]; or

(ii) in ~~61-8-410~~ [section 3(3)] for a violation of ~~61-8-410~~ [section 2(1)(e)].

(c) If an individual's registry identification card or license is subject to renewal during the revocation period, the individual may not renew the card until the full revocation period has elapsed. The card or license may be renewed only if the individual submits all materials required for renewal.

(8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject to revocation of the person's license from the date of the violation until a period of up to 1 year after the department of revenue certifies compliance with 15-64-103 or 15-64-104."

**Section 28.** Section 53-9-103, MCA, is amended to read:

**"53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

- (a) a victim;
- (b) a dependent of a deceased victim; or
- (c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

- (a) the offender;
- (b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

- (c) social security, medicare, and medicaid;

- (d) workers' compensation;

- (e) wage continuation programs of any employer;

- (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;

- (g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

- (h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or

- (i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

- (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;

- (b) results in bodily injury or death or involves domestic violence in a home where minor children were present; and

- (c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in ~~61-8-401~~ [section 1]; or

- (d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) “Dependent” means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim’s death but born after the victim’s death, including a child that is conceived as a result of the criminally injurious conduct.

(5) “Office” means the office of victims services established in 2-15-2016.

(6) “Victim” means:

(a) a person who suffers bodily injury or death as a result of:

(i) criminally injurious conduct;

(ii) the person’s good faith effort to prevent criminally injurious conduct; or

(iii) the person’s good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct; or

(b) a minor child present in a home where domestic violence occurred.”

**Section 29.** 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 on 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) “Autocycle” means a three-wheeled motorcycle that is equipped with safety belts, roll bars or roll hoops, a steering wheel, and seating that does not require the operator to straddle or sit astride it.

(4) “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.

(5) (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.

(6) (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.

(7) “CDLIS driver record” means the electronic record of a person’s commercial driver’s license status and history stored as part of the commercial driver’s license system established under 49 U.S.C. 31309.

(8) “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.

(9) "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; or

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(10) (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.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) operated when responding to or returning from an emergency call or operated in another official capacity;

(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 (10):

(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.

(11) "Commission" means the state transportation commission.

(12) "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; or

(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.

(13) "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.

(14) "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 (14)(a) through (14)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(15) (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 (15)(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.

(16) "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.

(17) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(18) "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.

(19) "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.

(20) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that person.

(21) "Driver" means a person who drives or is in actual physical control of a vehicle.

(22) "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 learner license;
- (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.

(23) "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.

(24) "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.

(25) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

(26) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(27) "Hazardous material" means:

- (a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or
- (b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

(28) "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.

(29) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(30) "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.

(31) "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.

(32) "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.

(33) "Low-speed electric vehicle" means a motor vehicle, on or by which a person may be transported, that:

- (a) has four wheels;
- (b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;
- (c) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;
- (d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(f) 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; and

(g) is equipped as provided in 61-9-432.

(34) "Low-speed restricted driver's license" means a license limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

(a) a temporary license or learner license;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of 61-5-122, whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

(35) "Manufactured home" has the meaning provided in 15-24-201.

(36) "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.

(37) "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.

(38) (a) "Medium-speed electric vehicle" is a motor vehicle, on or by which a person may be transported, that:

(i) has a maximum speed of 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.

(39) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(40) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215; or

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(41) (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.

(42) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles on 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.

(43) (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) A motorcycle designed for use on highways is a motor vehicle unless otherwise prescribed.

(c) A motorcycle designed for off-road recreational use is an off-highway vehicle unless it has been modified to meet the equipment standards specified in chapter 9 and has been registered for highway use.

(d) The term includes an auticycle.

(e) The term does not include a tractor, a bicycle or a moped 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.

(44) (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 or a moped, as defined in 61-8-102, or a motorized nonstandard vehicle.

(45) "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.

(46) (a) "Motorized nonstandard vehicle" means a vehicle, on 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 a moped as defined in 61-8-102, 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.

(47) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property on the highways of the state;

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; or

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle or a moped 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.

(48) "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.

(49) "Nonresident" means a person who is not a Montana resident.

(50) (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 for 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.

(51) (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 on the highways unless the vehicle is used for off-road recreation on public lands.

(52) "Operator" means a person who is in actual physical control of a motor vehicle.

(53) "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.

(54) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(55) "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.

(56) "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.

(57) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(58) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle on which the operator sits.

(b) The term does not include golf carts.

(59) "Railroad" means a carrier of persons or property on cars, other than streetcars, operated on stationary rails.

(60) (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 on rails.

(b) The term does not include streetcars.

(61) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(62) "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.

(63) "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.

(64) "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.

(65) "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.

(66) "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 on by the department after the expiration of the period of the revocation.

(67) "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.

(68) (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.

(69) "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).

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

(71) "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 on or is carried by another vehicle.

(72) "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.

(73) "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.

(74) (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.

(75) (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.

(76) (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.

(77) "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.

(78) "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.

(79) "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.

(80) "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.

(81) "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:

(i) 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs; or

(ii) 90 days from the date the record is issued for a permit issued pursuant to 61-3-303(3)(b).

(82) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(83) (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 on the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(84) "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.

(85) "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.

(86) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(87) “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.

(88) “Under the influence” has the meaning provided in ~~61-8-401~~ [section 1].

(89) “Used motor vehicle” includes any motor vehicle that has been sold, bargained, exchanged, or 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.

(90) “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.

(91) (a) “Vehicle” means a device in, on, or by which any person or property may be transported or drawn on a public highway, except devices moved by animal power or used exclusively on 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.

(92) “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.

(93) “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.

(94) “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 30.** Section 61-2-107, MCA, is amended to read:

**“61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver’s license that has been suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] must remain suspended or revoked until the driver has paid to the department a fee of \$200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.”

**Section 31.** Section 61-2-302, MCA, is amended to read:

**“61-2-302. Establishment of driver rehabilitation and improvement program – participation by offending drivers.** (1) The department may establish by administrative rule a driver rehabilitation and improvement program or programs. The programs may consist of electronic or classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver’s training, and other subjects or

tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

(2) Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department, unless the suspension or revocation was for an offense under ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or

(b) revoked and the person has:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) If a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation action must be terminated and the suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, or judge of a district court of the state.

(9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section.”

**Section 32.** Section 61-5-205, MCA, is amended to read:

**“61-5-205. Mandatory revocation or suspension of license upon certain convictions – duration of action – exceptions.** (1) The department shall revoke an individual’s driver’s license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;  
(b) any felony in the commission of which a motor vehicle is used;  
(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual’s driver’s license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) a driving offense under 61-8-401, 61-8-406, or 61-8-411 [section 2];

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208.

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense.”

**Section 33.** Section 61-5-208, MCA, is amended to read:

**“61-5-208. Period of suspension or revocation – limitation on issuance of probationary license – notation on driver’s license.** (1) The department may not suspend or revoke a driver’s license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under ~~61-8-731~~ [section 4], the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

**Section 34.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked – penalty – second offense of driving without licensing exemption.** (1) (a) A person commits the offense of driving a motor vehicle without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the person has obtained a restricted-use driving permit under 61-5-232;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) A person convicted of the offense of driving a motor vehicle without proof of a statutory exemption for the second time shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(ii) Except as provided in subsection (1)(b)(iii), a person convicted of the offense of driving during a suspension or revocation period shall be fined an amount not to exceed \$500 or be imprisoned for a term of not more than 6 months, or both.

(iii) If the reason for the suspension or revocation was that the person was convicted of a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or a similar offense under the laws of any other state or the suspension was under ~~61-8-402 or 61-8-409~~ [section 8] or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6 months or be fined an amount not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802."

**Section 35.** Section 61-5-218, MCA, is amended to read:

**"61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the driver's license or driving privilege reinstated.

(2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] shall pay a reinstatement fee as required by 61-2-107.

(b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(c) The reinstatement fee required under subsection (1) must be waived by the department when a court notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has determined that the person is indigent under the standards set forth in 47-1-111.

(3) The department shall deposit the fees collected under subsection (1) in the general fund.”

**Section 36.** Section 61-5-231, MCA, is amended to read:

**“61-5-231. Authorization of probationary license by DUI court – definition.** (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under ~~61-8-401 or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], driving with excessive alcohol concentration under ~~61-8-406~~ [section 2], or aggravated driving under the influence under ~~61-8-465~~ as defined in [section 1] is participating in a DUI court as defined in [section 1], the court may, in the court’s discretion, authorize a probationary driver’s license for the participant subject to ~~61-8-442~~ [section 6] and any other conditions imposed within the scope of the court’s authority.

(2) If the participant fails to comply with the court’s conditions, the court may revoke the probationary driver’s license and impose a driver’s license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court’s revocation of the probationary license.

~~(3) For purposes of this section, “DUI court” means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant’s criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration.”~~

**Section 37.** 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~~ [section 2], the definition of felony as provided in 45-2-101, and 61-7-105, 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);

(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.”

**Section 38.** Section 61-8-101, MCA, is amended to read:

**“61-8-101. Application – exceptions.** (1) As used in this chapter, “ways of this state open to the public” means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401(1)(b), (1)(c), and (2) [section 2(1) and (2)], with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and 61-8-401 ~~except subsections (1)(b), (1)(c), and (2) thereof, 61-8-402 through 61-8-405, and 61-8-465 [section 2], except under the influence of a dangerous drug and [section 2(2)],~~ with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.”

**Section 39.** Section 61-8-102, MCA, is amended to read:

**“61-8-102. Uniformity of interpretation – definitions.**

(1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) “Authorized emergency vehicle” means a vehicle of a governmental fire agency organized under Title 7, chapter 33, an ambulance, or an emergency vehicle designated or authorized by the department.

(b) “Bicycle” means a vehicle propelled solely by human power on which any person may ride, irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an electrically assisted bicycle.

(c) “Bicycle trailer” means a device with one or more wheels that is designed to be towed by a bicycle.

(d) “Business district” means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(e) “Controlled-access highway” means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(f) “Crosswalk” means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(g) “Electrically assisted bicycle” means a vehicle on which a person may ride that has two tandem wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than 20 miles an hour on a paved, level surface.

(h) “Flag person” means a person who directs, controls, or alters the normal flow of vehicular traffic on a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer’s duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(i) “Highway” has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(j) “Ignition interlock device” means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to ~~61-8-441~~ [section 13]; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(k) (i) “Intersection” means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling on different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(l) “Laned roadway” means a roadway that is divided into two or more clearly marked lanes for vehicular traffic.

(m) “Local authorities” means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(n) “Moped” means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(o) “Noncommercial motor vehicle” or “noncommercial vehicle” means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(10)(b).

(p) “Official traffic control devices” means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(q) “Pedestrian” means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(r) “Police vehicle” means a vehicle used in the service of any law enforcement agency.

(s) “Private road” or “driveway” means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(t) “Residence district” means the territory contiguous to and including a highway not comprising a business district when the property on the highway

for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(u) "Right-of-way" means the privilege of the immediate use of the roadway.

(v) "Roadway" means the portion of a highway that is improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(w) "School bus" has the meaning provided in 20-10-101.

(x) "Sidewalk" means the portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(y) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(z) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

**Section 40.** Section 61-8-805, MCA, is amended to read:

**"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more – hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For purposes of this section, a conviction for violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] while operating a commercial motor vehicle or a prior refusal to be tested under an implied consent law must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1)."

**Section 41.** Section 61-8-807, MCA, is amended to read:

**“61-8-807. Administration of tests.** Tests required under this part must be administered as provided in ~~61-8-405~~ [section 11].”

**Section 42.** 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, 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. 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~~ [section 5].

(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) 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, 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 (4)(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 (4), “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).

(5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2], the court in which the conviction occurs shall require the person to surrender the registry identification card or license.

(b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services.”

**Section 43.** Section 67-1-211, MCA, is amended to read:

**“67-1-211. Alcohol concentration standards – evidence admissible – administration of tests.** (1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, *as defined in [section 1]* of 0.04% by weight or more ~~as defined in 61-8-407~~, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person’s blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person’s body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person’s blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person’s body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in ~~61-8-405~~ *[section 11]* and the definition of alcohol concentration provided in ~~61-8-407~~ *[section 1]* apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204.”

**Section 44. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 61-8-401. Driving under influence of alcohol or drugs -- definitions.
- 61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension.
- 61-8-403. Right of appeal to court.
- 61-8-404. Evidence admissible -- conditions of admissibility.
- 61-8-405. Administration of tests.
- 61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.
- 61-8-407. Definition of alcohol concentration.
- 61-8-408. Multiple convictions prohibited.
- 61-8-409. Preliminary alcohol screening test.

- 61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more.
- 61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta-9-tetrahydrocannabinol.
- 61-8-421. Forfeiture procedure.
- 61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to forfeiture -- penalty.
- 61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.
- 61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements.
- 61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.
- 61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.
- 61-8-461. Definitions.
- 61-8-465. Aggravated DUI.
- 61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.
- 61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level -- first through third offense.
- 61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense.
- 61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required.
- 61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.
- 61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed.
- 61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

**Section 45. Codification instruction.** [Sections 1 through 17] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1 through 17].

**Section 46. 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 47. Effective date.** [This act] is effective January 1, 2022.

**Section 48. Applicability.** [This act] applies to DUI incidents taking place on or after [the effective date of this act].

Approved May 12, 2021

**CHAPTER NO. 499**

[SB 384]

AN ACT REVISING AQUATIC INVASIVE SPECIES FEES FOR HYDROELECTRIC FACILITIES; AMENDING SECTION 15-72-601, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 15-72-601, MCA, is amended to read:

**“15-72-601. Invasive species fee for hydroelectric facilities.** (1) In recognition of the threat that invasive species pose to Montana’s hydroelectric power structures and systems, a hydroelectric facility shall pay a quarterly invasive species fee ~~based on of \$397.88 per megawatt of~~ the facility’s nameplate capacity authorized by the federal energy regulatory commission. ~~The quarterly invasive species fee for nameplate capacity of:~~

(a) ~~at least 1.5 megawatts but less than 25 megawatts is \$274.95 per megawatt;~~

(b) ~~at least 25 megawatts but less than 100 megawatts is \$549.90 per megawatt; and~~

(c) ~~100 megawatts or more is \$824.85 per megawatt.~~

(2) Every hydroelectric facility subject to the fee in subsection (1) shall file on forms provided by the department and pay within 30 days after the end of each quarterly period. The quarterly periods end March 31, June 30, September 30, and December 31 of each year.

(3) If the fee is not paid on or before the due date, a penalty and interest must be assessed as provided in 15-1-216. The department may waive the penalty pursuant to 15-1-216.

(4) The department may audit the records and other documents of a hydroelectric facility to ensure that the proper fee is paid and collected pursuant to this section.

(5) A hydroelectric facility that funds protection, mitigation, and enhancement measures pursuant to a settlement approved by the federal energy regulatory commission may use any of those funds that are unobligated to pay, in whole or in part, the fee owed pursuant to subsection (1).

(6) Money collected pursuant to this section must be deposited in the invasive species account established in 80-7-1004.

(7) For the purposes of this section, “hydroelectric facility” means an operating facility located in Montana in a watercourse as that term is defined in 85-2-102 that produces electricity using water power and has more than 1.5 megawatts in nameplate capacity.”

**Section 2. Effective date.** [This act] is effective July 1, 2021.

**Section 3. Applicability.** [Section 1] applies to quarterly periods beginning July 1, 2021.

Approved May 12, 2021

**CHAPTER NO. 500**

[SB 385]

AN ACT GENERALLY REVISING PROPERTY TAX AND ASSESSMENT LAWS; REVISING SPECIAL DISTRICT LAWS; PROVIDING FUNDING LIMITATIONS FOR SPECIAL DISTRICTS THAT ENCOMPASS THE ENTIRE JURISDICTION OF A LOCAL GOVERNMENT; LIMITING THE DURATION

OF CERTAIN SPECIAL DISTRICTS; ALLOWING A REFERENDUM TO EXTEND THE DURATION OF A SPECIAL DISTRICT; REVISING THE PETITION THRESHOLD REQUIRED TO CREATE A SPECIAL DISTRICT; AMENDING SECTIONS 7-11-1003, 7-11-1007, AND 7-11-1011, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Provisions applicable to jurisdiction-wide special districts.** (1) This section applies to a special district created under this part by resolution as allowed in 7-11-1007 and 7-11-1008 or by referendum as allowed in 7-11-1011 that encompasses the entire jurisdictional area of a local government as defined in 7-11-1002(2).

(2) (a) If the governing body seeks to create a special district by resolution pursuant to 7-11-1007 and 7-11-1008, the governing body may not increase the total amount assessed by the district above the amount set forth in the resolution as required by 7-11-1007(2)(e) in a subsequent year by more than the lesser of the following calculated values:

(i) the average of the total amount assessed by the district in each of the previous 5 years multiplied by the average rate of inflation since the inception of the district; or

(ii) the total amount assessed by the governing body in the year the district was created multiplied by the average rate of inflation since the inception of the district.

(b) The rate of inflation referenced in subsections (2)(a)(i) and (2)(a)(ii) must be calculated 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.

(3) (a) If the governing body seeks to create a special district by resolution and referendum pursuant to 7-11-1011, the resolution ordering the referendum must include, in addition to the items included in 7-11-1011, a detailed description of:

(i) the estimated total cost of the programs, services, or improvements to be funded over the duration of the district;

(ii) whether the governing body anticipates bonding for improvements and the estimated principal amount of the bonds;

(iii) the estimated annual rate or amount of the proposed assessments or fees that would be imposed over the duration of the district; and

(iv) an estimate of the impact of the creation of the district on a property in the district, according to the method of assessment identified as required by 7-11-1011(2)(e).

(b) The governing body may not exceed the amounts provided in subsection (3)(a) over the duration of the district without subsequent approval of the voters.

(4) (a) Unless otherwise dissolved pursuant to this part or by the terms of the resolution creating the special district, a special district created by resolution pursuant to 7-11-1007 and 7-11-1008 and subject to the provisions of this section must dissolve 13 years after the date of the order creating the district as provided in 7-11-1013 or when any bonded indebtedness has been paid in full, whichever is later. The provisions of 7-11-1029(5) through (8) apply to the dissolution of a special district as provided in this subsection (4)(a).

(b) Prior to the dissolution of a special district, the governing body may extend the duration of the district by following the same procedures set forth in this section and the applicable provisions of 7-11-1003, 7-11-1007, 7-11-1008, and 7-11-1011.

(5) As used in this section, "special district" means a special district created under this part that encompasses the entire jurisdictional area of a local government as defined in 7-11-1002(2).

**Section 2.** Section 7-11-1003, MCA, is amended to read:

**"7-11-1003. Authorization to create special districts.** (1) Whenever the public convenience and necessity may require:

(a) the governing body may:

(i) create a special district by resolution *pursuant to 7-11-1007, 7-11-1008, and the provisions of [section 1], if applicable*; or

(ii) order a referendum on the creation of a special district to serve the inhabitants of the special district as provided in 7-11-1011 *and the provisions of [section 1], if applicable*; or

(b) petitioners may initiate the creation of a special district to serve inhabitants of the special district as provided in subsection (2).

(2) (a) ~~(i)~~ Upon receipt of a petition to institute the creation of a special district that is signed by at least ~~25%~~ *40%* of the registered voters or by the owners of at least ~~25%~~ *40%* of the real property within the boundary of the proposed special district and that is submitted to the clerk of the governing body, the governing body shall ~~order a referendum on the creation of the special district pursuant to 7-11-1011.~~

~~(ii) Upon receipt of a petition to institute the creation of a special district that is signed by more than 50% of the registered voters or by the owners of more than 50% of the real property within the boundary of the proposed special district, the governing body shall conduct a public hearing pursuant to 7-11-1007. Following the hearing and if insufficient protests are made as provided in 7-11-1008, the governing body shall order the creation of the special district in accordance with 7-11-1013.~~

~~(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 at least 40% of the registered voters or at least 40% of the property taxpayers within the boundary of the proposed district *commence proceedings to create a special district as provided in subsection (1)(a).*~~

~~(c)(b)~~ The form of the petition may be prescribed by the governing body, and the clerk of the governing body shall verify the signatures on the petition.

~~(d)(c)~~ Subject to subsection (2)(c)(b), 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 either the street address or the legal description, whichever the signatory prefers, 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 or maintenance program within the special district;

(v) include a 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 60 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 3.** Section 7-11-1007, MCA, is amended to read:

**“7-11-1007. 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 as provided in 7-11-1003(1)(a) or upon a petition that contains the required number of signatures as provided in 7-11-1003(1)(b).

(2) The resolution must designate, *consistent with the requirements of [section 1] and 7-11-1024:*

(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~~ *maximum rate or amount of the initial proposed assessments or fees that would be imposed;*

(f) *the method of financing the proposed program or improvements;*

~~(g)~~(g) any requirements specifically applicable to the type of special district;

~~(g)~~(h) whether the proposed special district would be administered by the governing body or an appointed or elected board; and

~~(h)~~(i) the duration of the proposed special district.

(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 distribution list in accordance with 2-6-1017.

(c) A copy of the notice described in subsection (3)(a) must be mailed to each owner or purchaser under contract for deed of the property included on the list referred to in subsection (3)(b) as shown by the current property tax record maintained by the department of revenue for the county.”

**Section 4.** Section 7-11-1011, MCA, is amended to read:

**“7-11-1011. Referendum – conduct of election on creating special district.** (1) The governing body may order a referendum on the creation of the proposed special district.

(2) The resolution ordering the referendum must state, *consistent with the requirements of [section 1], 7-11-1007, and 7-11-1024:*

(a) the ~~type and~~ *maximum rate or amount of the initial proposed assessments or fees that would be imposed, consistent with the requirements of 7-11-1007(2)(e) and 7-11-1024;*

(b) the type of activities proposed to be financed, including a general description of the program or improvements;

(c) a 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;

- (e) *the method of financing the proposed program or improvements; and*
- (f) *the duration of the proposed special district.*

(3) The election must be conducted in accordance with Title 13, chapter 1, part 5.

(4) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed special district) be adopted?"

(5) An individual is entitled to vote on the proposition if the individual:

- (a) is a registered elector 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) If the proposition 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;

(b) record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and

(c) notify any municipalities lying within the boundaries of the special district."

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 11, part 10, and the provisions of Title 7, chapter 11, part 10, apply to [section 1].

**Section 6. Effective date.** [This act] is effective July 1, 2021.

**Section 7. Applicability.** (1) [Section 1(1) through (3) and (5)] apply to any special district created on or after [the effective date of this act].

(2) [Section 1(4)] applies to all special districts created by resolution and protest pursuant to 7-11-1007 and 7-11-1008 on or after July 1, 2009.

Approved May 12, 2021

## CHAPTER NO. 501

[SB 395]

AN ACT CREATING THE MONTANA PHARMACY BENEFIT MANAGER OVERSIGHT ACT; ESTABLISHING LICENSURE REQUIREMENTS FOR PHARMACY BENEFIT MANAGERS; PROHIBITING CERTAIN PRACTICES; PROHIBITING UNTRUE, DECEPTIVE, OR MISLEADING ADVERTISING; REQUIRING TRANSPARENCY AND MAXIMUM ALLOWABLE COST REPORTING; PROVIDING FOR NETWORK ADEQUACY; AUTHORIZING ENFORCEMENT AND EXAMINATION AUTHORITY; EXPANDING THE MAXIMUM ALLOWABLE COST LAWS TO GROUP AND BLANKET POLICIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 33-17-102, 33-22-101, 33-22-170, 33-22-174, 33-30-102, 33-31-111, 33-35-306, 33-38-102, AND 39-71-2375, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1. Short title -- purpose.** (1) [Sections 1 through 12] may be cited as the "Montana Pharmacy Benefit Manager Oversight Act".

(2) [Sections 1 through 12] establishes the standards and criteria for the licensure and regulation of pharmacy benefit managers that provide claims processing services or other prescription drug or device services for health benefit plans and workers' compensation insurance carriers.

(3) The purpose of this act is to:

- (a) promote, preserve, and protect the public health, safety, and welfare through regulation and licensure of pharmacy benefit managers;
- (b) provide for powers and duties of the commissioner in licensing and regulating pharmacy benefit managers; and
- (c) provide penalties for violations of [sections 1 through 12].

**Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claims processing services" means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include either or both of the following:

- (a) receiving payments for pharmacist services; and
- (b) making payments to pharmacists or pharmacies.

(2) "Enrollee" means a member, policyholder, subscriber, covered person, beneficiary, dependent, or other individual participating in a health benefit plan.

(3) "Federally certified health entity" means a 340B covered entity as described in 42 U.S.C. 256b(a)(4).

(4) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(5) (a) "Health carrier" means an entity that is subject to the insurance laws and regulations of this state or to the jurisdiction of the commissioner and that contracts or offers to contract or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(b) The term includes:

- (i) self-funded multiple employer welfare arrangements as defined in 33-35-103; and
- (ii) any other entity providing a plan of health insurance, health benefits, or health care services.

(6) "Manufacturer" has the meaning provided in 37-7-602.

(7) "Other prescription drug or device services" means services other than claims processing services that are provided directly or indirectly, whether in connection with or separate from claims processing services, including but not limited to:

- (a) negotiating rebates, discounts, or other financial incentives and arrangements with manufacturers, wholesale distributors, or other third parties;
- (b) disbursing or distributing rebates;
- (c) managing or participating in incentive programs or arrangements for pharmacist services;
- (d) negotiating or entering into contractual arrangements with pharmacists, pharmacies, or both;
- (e) developing and maintaining formularies;
- (f) designing prescription drug benefit programs;
- (g) advertising or promoting services; or
- (h) administering prior authorization, step therapy, case management, or other utilization review programs.

(8) "Pharmacist" has the meaning provided in 33-22-170.

(9) "Pharmacist services" means products, goods, and services or any combination of products, goods, and services provided as part of the practice of pharmacy.

(10) "Pharmacy" means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7.

(11) (a) "Pharmacy benefit manager" means a person, including a wholly or partially owned or controlled subsidiary of a pharmacy benefit manager, that provides claims processing services or other prescription drug or device services, or both, to:

- (i) enrollees who are residents of this state, for health benefit plans; or
- (ii) injured workers of workers' compensation insurance carriers.

(b) The term does not include:

(i) a health care facility as defined in 50-5-101 that is licensed in this state;

(ii) a health care professional licensed under Title 37;

(iii) a consultant who provides advice only as to the selection or performance of a pharmacy benefit manager; or

(iv) a health carrier or workers' compensation insurance carrier to the extent that the carrier performs any claims processing and other prescription drug or device services exclusively for its enrollees or injured workers.

(12) "Plan sponsor" has the meaning provided in 33-10-202.

(13) (a) "Rebates" means all price concessions, however characterized, paid by a manufacturer to a pharmacy benefit manager, including discounts and other remuneration or price concessions, that are based on the actual or estimated utilization of a prescription drug.

(b) The term includes price concessions based on the effectiveness of a prescription drug as in a value-based or performance-based contract.

(14) "Wholesale acquisition cost" has the meaning provided in 42 U.S.C. 1395w-3a.

(15) "Wholesale distributor" or "distributor" has the meaning provided in 37-7-602.

(16) "Workers' compensation insurance carrier" means:

(a) an insurance company transacting business under compensation plan No. 2; or

(b) the state fund compensation plan No. 3 under Title 39, chapter 71.

**Section 3. Licensing required.** (1) A person may not perform an act or do business in this state as a pharmacy benefit manager without a valid license issued under [sections 1 through 12] by the commissioner.

(2) A license issued under [sections 1 through 12] is nontransferable.

(3) A pharmacy benefit manager shall apply to the commissioner on a form prescribed by the commissioner. At a minimum, the application form must include the following information:

(a) the name, business address, and telephone number of the pharmacy benefit manager and the name, address, and contact information for the principal contact person of the pharmacy benefit manager for communications with the commissioner on licensure-related matters;

(b) the name and address of:

(i) all members of the pharmacy benefit manager's board of directors, board of trustees, executive committee, or other governing board of committee;

(ii) the principal officers in the case of a corporation; or

(iii) the partners or members in the case of a partnership or association;

(c) proof of registration with the Montana secretary of state;

(d) a copy of the most recent fiscal yearend audited financial statement of the pharmacy benefit manager;

(e) a list of all health carrier, plan sponsor, and workers' compensation insurance carrier clients in this state;

(f) a description of the projected number of enrollees and injured workers to be administered by the pharmacy benefit manager in this state on an annual basis for each health carrier client, plan sponsor client, and workers' compensation insurance carrier client;

(g) a copy of the policies and procedures that demonstrate the pharmacy benefit manager has established processes to comply with the requirements of 33-22-170 through 33-22-177 and 33-22-180 concerning maximum allowable costs lists, including the appeals process required under 33-22-173;

(h) a description of the pharmacy benefit manager's network service areas and pharmacy accessibility in this state;

(i) disclosure of any ownership interest, either directly or indirectly or through an affiliate, holding company, or subsidiary in a pharmacy or mail-order pharmacy that is part of the pharmacy benefit manager's network; and

(j) disclosure of any ownership interest, either directly or indirectly or through an affiliate, holding company, or subsidiary by a health carrier or workers' compensation insurance carrier in the pharmacy benefit manager or by the pharmacy benefit manager in a health carrier or workers' compensation insurance carrier.

(4) Each application for licensure must be accompanied by a nonrefundable fee of \$1,000.

(5) The commissioner may require additional information for submission from an applicant and may obtain any document or information reasonably necessary to verify the information contained in an application.

(6) The commissioner may refuse to issue or renew a license if the commissioner finds that the applicant:

(a) is not competent, trustworthy, or financially responsible;

(b) has violated the insurance laws of this state, including violation of 33-22-170 through 33-22-177 and 33-22-180, or any other state; or

(c) has had an insurance or other certificate of authority or license denied or revoked for cause by any jurisdiction.

(7) The commissioner shall grant or deny an initial application for a license within 60 days from the date that a completed application and license fee is received.

(8) (a) Unless surrendered, suspended, or revoked by the commissioner, a license issued under this section is valid as long as the pharmacy benefit manager:

(i) continues to do business in this state;

(ii) remains in compliance with the provisions of [sections 1 through 12];

(iii) completes a renewal application on a form prescribed by the commissioner; and

(iv) pays an annual license renewal fee of \$500.

(b) The renewal fee and application must be received by the commissioner at least 30 days before the anniversary of the effective date of the pharmacy benefit manager's initial or most recent license.

(9) Denial of an application for initial licensure or renewal of licensure is considered a contested case under the Montana Administrative Procedure Act.

(10) In lieu of denying an application for initial licensure or renewal of licensure, the commissioner may allow the pharmacy benefit manager to submit a corrective action plan to cure or correct the deficiencies identified in review of the application.

#### **Section 4. Pharmacy benefit manager prohibited practices.**

(1) In any participation contracts between a pharmacy benefit manager and pharmacies or pharmacists providing prescription drug coverage, a pharmacy

or pharmacist may not be prohibited, restricted, or penalized in any way from disclosing to any enrollee or injured worker any information the pharmacy or pharmacist considers appropriate regarding:

(a) the decision of utilization reviewers or similar persons to authorize or deny drug coverage or benefits; and

(b) the process that is used to authorize or deny drug coverage or benefits.

(2) (a) A pharmacy benefit manager contract with a participating pharmacy or pharmacist in this state may not prohibit, restrict, or limit disclosure of information to the commissioner when the commissioner is investigating or examining a complaint or conducting a review of a pharmacy benefit manager's compliance with the requirements of [sections 1 through 12].

(b) A pharmacy benefit manager may not terminate the contract of or penalize a pharmacy or pharmacist for sharing any portion of the pharmacy benefit manager contract with the commissioner for investigation of a complaint or a question regarding whether the contract complies with this part.

(c) Any examination or review under this section must follow the examination procedures and requirements applicable to insurers under Title 33, chapter 1, part 4, including but not limited to the confidentiality provisions of 33-1-409.

**Section 5. Marketing and advertising.** (1) A pharmacy benefit manager may not cause or knowingly permit the use of an advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

(2) The commissioner may not review or approve a pharmacy benefit manager's marketing or advertising documents prior to use by the pharmacy benefit manager.

(3) The commissioner shall review complaints related to pharmacy benefit manager marketing and advertising material to determine whether the materials violate the provisions of this section.

**Section 6. Pharmacy benefit manager transparency to carriers and plan sponsors.** (1) Beginning in the second quarter after the effective date of a contract between a pharmacy benefit manager and a health carrier, plan sponsor, or workers' compensation insurance carrier, the pharmacy benefit manager shall disclose, within 45 days of a request of the health carrier, plan sponsor, or workers' compensation insurance carrier, the following information regarding prescription drug benefits specific to the health carrier, plan sponsor, or workers' compensation insurance carrier:

(a) the aggregate wholesale acquisition costs from a manufacturer or wholesale distributor for each therapeutic category of prescription drugs;

(b) the aggregate wholesale acquisition costs from a manufacturer or wholesale distributor for each therapeutic category of prescription drugs available to enrollees of the health carrier or plan sponsor or injured workers of the workers' compensation insurance carrier;

(c) the aggregate amount of rebates received by the pharmacy benefit manager by therapeutic category of prescription drugs;

(d) any other fees received from a manufacturer or wholesale distributor and the reason for the fees;

(e) whether the pharmacy benefit manager has a contract, agreement, or other arrangement with a manufacturer to exclusively dispense or provide a drug to enrollees of the health carrier or plan sponsor or injured workers of the workers' compensation carrier, and the application of all consideration or economic benefits collected or received pursuant to the arrangement;

(f) prescription drug utilization information for enrollees of the health carrier or plan sponsor or injured workers of the workers' compensation carrier, including but not limited to:

(i) the top 10 prescription drugs by average total spending for each enrollee or injured worker;

(ii) the top 10 prescription drugs by average out-of-pocket spending for each enrollee or injured worker;

(iii) the top 10 therapeutic classes of prescription drugs by total spending and volume;

(iv) the total number of pharmacy transactions; and

(v) the total number of rejected pharmacy transactions, including a breakdown of the number rejected for the following reasons:

(A) nonformulary status;

(B) prior authorization requirements; and

(C) step therapy requirements;

(g) deidentified claims-level information in electronic format that allows the health carrier, plan sponsor, or workers' compensation insurance carrier to sort and analyze the following information for each claim:

(i) whether the claim required prior authorization;

(ii) the amount paid to the pharmacy for each prescription, net of the aggregate amount of fees or other assessments imposed on the pharmacy, including point-of-sale and retroactive charges;

(iii) any spread between the net amount paid to the pharmacy as described in subsection (1)(g)(ii) and the amount charged to the health carrier, plan sponsor, or workers' compensation insurance carrier;

(iv) whether the pharmacy is or is not:

(A) under common control or ownership with the pharmacy benefit manager;

(B) a preferred pharmacy for the health benefit plan or workers' compensation insurance carrier; or

(C) a mail-order pharmacy; and

(v) whether enrollees or injured workers are required by the health benefit plan or workers' compensation insurance carrier to use the pharmacy;

(h) the aggregate amount of payments made by the pharmacy benefit manager on behalf of the health carrier, plan sponsor, or workers' compensation insurance carrier to:

(i) pharmacies owned or controlled by the pharmacy benefit manager; and

(ii) pharmacies not owned or controlled by the pharmacy benefit manager; and

(i) the aggregate amount of the fees imposed on or collected from network pharmacies or other assessments against network pharmacies, including point-of-sale fees and retroactive charges, and the amount of fees passed on to the health carrier, plan sponsor, or workers' compensation insurance carrier pursuant to the contract with the health carrier, plan sponsor, or workers' compensation insurance carrier.

(2) A health carrier, plan sponsor, or workers' compensation insurance carrier may request more detailed data from the pharmacy manager for any aggregate data provided under this section, including information to verify the pharmacy benefit manager's source of and reported amounts of rebates and fees.

(3) A pharmacy benefit manager may require a health carrier, plan sponsor, or workers' compensation insurance carrier to agree to a nondisclosure agreement that specifies that the information reported under this section is proprietary information. A pharmacy benefit manager requiring the use of a

nondisclosure agreement is not required to disclose information under this section to the health carrier, plan sponsor, or workers' compensation insurance carrier until the health carrier, plan sponsor, or workers' compensation insurance carrier has executed the nondisclosure agreement.

**Section 7. Transparency report to the commissioner.** (1) By July 1 each year for the immediately preceding calendar year, each pharmacy benefit manager doing business in this state shall report to the commissioner on a form prescribed by the commissioner the following information regarding prescription drug benefits provided to enrollees of each health carrier and plan sponsor and injured workers of workers' compensation insurance carriers in the state with which the pharmacy benefit manager has contracted during the previous calendar year:

(a) the aggregate prescription drug spending for all of the pharmacy benefit manager's health carrier, plan sponsor, and workers' compensation insurance carrier clients in this state;

(b) the aggregate prescription drug spending as described in subsection (1)(a) net of all rebates and other fees and payments, direct or indirect, from all sources;

(c) the aggregate dollar amount of all rebates that the pharmacy benefit manager received from all manufacturers for all health carrier, plan sponsor, and workers' compensation insurance carrier clients in this state;

(d) the aggregate dollar amount of all fees from all sources, direct or indirect, that the pharmacy benefit manager received for all of the pharmacy benefit manager's health carrier, plan sponsor, and workers' compensation insurance carrier clients in this state and the reason for the fees;

(e) the aggregate dollar amount of all retained rebates and fees, as listed in subsection (1)(d), that the pharmacy benefit manager received from all sources, direct or indirect, that were not passed through to health carrier, plan sponsor, and workers' compensation insurance carrier clients in this state;

(f) the aggregate retained rebate and fees percentage;

(g) the highest, lowest, and mean aggregate retained rebate and fees percentage for all of the pharmacy benefit manager's health carrier, plan sponsor, and workers' compensation insurance carrier clients in this state;

(h) deidentified claims-level information in electronic format that allows the commissioner to sort and analyze the following information for each claim:

(i) the drug and quantity for each prescription;

(ii) whether the claim required prior authorization;

(iii) patient cost-sharing paid on each prescription;

(iv) the amount paid to the pharmacy for each prescription, net of the aggregate amount of fees or other assessments imposed on the pharmacy by the pharmacy benefit manager, including point-of-sale and retroactive charges;

(v) any spread between the net amount paid to the pharmacy as calculated in subsection (1)(h)(iv) and the amount charged to the health carrier, plan sponsor, or workers' compensation insurance carrier client;

(vi) the pharmacy used for each prescription;

(vii) whether the pharmacy is or is not:

(A) under common control or ownership with the pharmacy benefit manager;

(B) a preferred pharmacy under the health benefit plan; or

(C) a mail-order pharmacy; and

(viii) whether enrollees or injured workers are required by the health benefit plan or workers' compensation insurance carrier to use the pharmacy; and

(i) the aggregate amount of rebates passed on by the pharmacy benefit manager to the enrollees of each health carrier and plan sponsor client in this state at the point of sale that reduced the enrollee's applicable deductible, copayment, coinsurance, or other cost-sharing amount.

(2) For the purposes of this section, the aggregate retained rebate and fee percentage must be calculated for each health carrier, plan sponsor, and workers' compensation insurance carrier for rebates and fees received in the previous calendar year by dividing the sum total dollar amount of rebates and fees from all manufacturers for all utilization of enrollees of a health carrier or plan sponsor and injured workers of a workers' compensation insurance carrier that was not passed through to the health carrier, plan sponsor, or workers' compensation insurance carrier by the sum total dollar amount of all rebates and fees received from all sources, direct or indirect, for all enrollees of a health carrier or plan sponsor and injured workers of a workers' compensation insurance carrier.

(3) The commissioner may request more detailed information from a pharmacy benefit manager for any aggregate data reported under this section, including information to verify a pharmacy benefit manager's reported amounts of rebates and fees and their allocation to a health carrier, plan sponsor, or workers' compensation insurance carrier.

(4) On the request of a pharmacy benefit manager, the commissioner may exempt from disclosure any part of the pharmacy benefit manager's submission that the commissioner determines to contain trade secrets as defined in 30-14-402.

(5) (a) Information provided pursuant to (1)(h)(iii) through (1)(h)(v) is considered a response to an examination under Title 33, chapter 1, part 4, and is subject to the confidentiality provisions of 33-1-409. Any data, documents, materials, or other information provided pursuant to those subsections is not subject to subpoena or discovery and is not admissible in evidence in any private civil action.

(b) The commissioner may use the data, documents, materials, or other information in the furtherance of a regulatory or legal action brought as part of the commissioner's official duties.

(6) (a) By December 31 of each year, the commissioner shall publish on the commissioner's website an aggregated rebate and fee transparency report based on the information submitted by each pharmacy benefit manager.

(b) The report may not contain information considered under this section to be confidential or a trade secret.

(c) The report must be published in a manner that does not disclose:

(i) the identity of a specific health carrier, plan sponsor, or workers' compensation insurance carrier;

(ii) the prices charged for a specific prescription drug or class of drugs; or

(iii) the amount of any rebates provided for a specific prescription drug or class of drugs.

(7) The commissioner may request the information required under this section at any time if the commissioner believes the information is reasonably necessary to ensure compliance with [sections 1 through 12].

**Section 8. Pharmacy benefit manager appeals report.** (1) Pharmacy benefit managers shall track, monitor, and report to the commissioner each quarter the following aggregated information related to appeals filed pursuant to 33-22-173:

(a) the number of appeals filed by pharmacies;

(b) whether the appeals were denied or upheld by the pharmacy benefit manager and if denied, the reasons for the denials;

(c) for each denial, confirmation that the pharmacy benefit manager provided the pharmacy in writing the pricing and other information required under 33-22-173;

(d) the total amount of price adjustments made by the pharmacy benefit manager; and

(e) the average amount of days taken to make price adjustments.

(2) The report must be filed within 30 days of the close of each calendar quarter.

(3) The commissioner may request information required under this section at any time if the commissioner believes the information is reasonably necessary to ensure compliance with [sections 1 through 12], 33-22-170 through 33-22-177, and 33-22-180.

**Section 9. Network adequacy.** (1) A pharmacy benefit manager shall provide an adequate and accessible pharmacy network for the provision of prescription drugs to ensure reasonable proximity of pharmacies to the businesses or personal residences of enrollees and injured workers.

(2) In determining whether a pharmacy benefit manager has complied with the requirements of this section, consideration must be given to the relative availability of physical pharmacies in a geographic area.

(3) The commissioner shall adopt rules for network adequacy.

**Section 10. Federal 340B drug pricing program.** A pharmacy benefit manager or health carrier may not:

(1) prohibit a federally certified health entity or a pharmacy under contract with an entity to provide pharmacy services from participating in the pharmacy benefit manager's or health carrier's provider network;

(2) reimburse a federally certified health entity or a pharmacy under contract with an entity differently than it reimburses other similarly situated pharmacies;

(3) require a claim for a drug to include a modifier to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by the medicaid program provided for in Title 53, chapter 6, part 1; or

(4) create a restriction or an additional charge on a patient who chooses to receive drugs from a federally certified health entity or a pharmacy under contract with an entity, including but not limited to a patient's inability to fully pay a copayment.

**Section 11. Enforcement -- penalties.** (1) The commissioner shall enforce the provisions of [sections 1 through 12], 33-22-170 through 33-22-177, and 33-22-180 and may examine the affairs of a pharmacy benefit manager to determine compliance with the provisions.

(2) Any examination under this section must follow the examination procedures and requirements applicable to insurers under Title 33, chapter 1, part 4, including the confidentiality provisions of 33-1-409.

(3) A pharmacy benefit manager may not be regularly examined under the same time period as required of insurers under 33-1-401 but the commissioner may examine the pharmacy benefit manager at any time if the commissioner believes it is reasonably necessary to ensure compliance with [sections 1 through 12].

(4) The commissioner may impose a fine in accordance with 33-1-317 and 33-1-318 for a violation of [sections 1 through 12], 33-22-170 through 33-22-177, and 33-22-180.

**Section 12. Rulemaking.** The commissioner may adopt rules as necessary to implement the provisions of [sections 1 through 12].

**Section 13.** Section 33-17-102, MCA, is amended to read:

**“33-17-102. Definitions.** As used in this chapter, 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 or a public 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 pharmacy benefit manager as defined in [section 2] that is licensed pursuant to [section 3];*

~~(iv)~~(v) 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)~~(vi) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

~~(vi)~~(vii) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

~~(vii)~~(viii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

~~(viii)~~(ix) 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)~~(x) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

~~(x)~~(xi) 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)~~(xii) 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)(xiii) 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) (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.

(5) "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.

(6) "Consultant license" means a document issued by the commissioner that authorizes an individual to act as an insurance consultant.

(7) "Exchange" means a health benefit exchange established by the state of Montana or an exchange established by the United States department of health and human services in accordance with 42 U.S.C. 18031.

(8) "Home state" means the District of Columbia or any state or territory of the United States in which a person licensed under this chapter maintains a principal place of residence or a principal place of business.

(9) "Individual" means a natural person.

(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.

(11) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

(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.

(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.

(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.

(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).

(16) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(17) "Lines of authority" means any kind of insurance as defined in Title 33.

(18) "Navigator" means a person certified by the commissioner under 33-17-241 and selected to perform the activities and duties identified in 42 U.S.C. 18031, et seq.

(19) "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.

(20) "Person" means an individual or a business entity.

(21) (a) "Public adjuster" means an adjuster retained by and representing the interests of the insured.

(b) The term does not include a person who provides an estimate of work to an insurer on behalf of an insured as long as the insured is notified of all communications between the person and the insurer related to the estimates.

(22) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

(23) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(24) "Suspend" means to bar the use of a person's license for a period of time."

**Section 14.** 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, 33-22-138, 33-22-140, 33-22-141, 33-22-142, 33-22-153, 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) (a) Sections 33-22-137, 33-22-150 through 33-22-152, *33-22-170 through 33-22-177*, 33-22-180, and 33-22-301 apply to group or blanket policies.

(b) Sections ~~33-22-175 [1 through 12] and 33-22-170~~ through 33-22-177 apply to workers' compensation, ~~group, and blanket~~ policies."

**Section 15.** Section 33-22-170, MCA, is amended to read:

**"33-22-170. Definitions.** As used in 33-22-170 through 33-22-177 and 33-22-180, the following definitions apply:

(1) "Contract pharmacy" means a pharmacy operating under contract with a federally certified health entity to provide dispensing services to the federally certified health entity.

(2) "Federally certified health entity" means a 340B covered entity as described in 42 U.S.C. 256b(a)(4).

(3) "Maximum allowable cost list" means the list of drugs used by a pharmacy benefit manager that sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.

(4) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy pursuant to Title 37, chapter 7.

(5) "Pharmacy" means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy benefit manager, health insurance issuer, or plan sponsor.

(6) "Pharmacy benefit manager" means a person who contracts with pharmacies on behalf of a health insurance issuer, third-party administrator,

or plan sponsor to process claims for prescription drugs, provide retail network management for pharmacies or pharmacists, ~~and pay pharmacies or pharmacists for prescription drugs, or provide other prescription drug or device services.~~

(7) “Pharmacy performance measurement entity” means:

(a) the electronic quality improvement platform for plans and pharmacies;  
or

(b) an entity approved by the board of pharmacy provided for in 2-15-1733 as a nationally recognized and unbiased entity that assists pharmacies in improving performance measures.

(8) “Prescription drug” means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(9) “Prescription drug order” has the meaning provided in 37-7-101.

(10) “Reference pricing” means a calculation for the price of a pharmaceutical that uses the most current nationally recognized reference price or amount to set the reimbursement for prescription drugs and other products, supplies, and services covered by a network contract between a plan sponsor, health insurance issuer, or pharmacy benefit manager and a pharmacy or pharmacist.”

**Section 16.** Section 33-22-174, MCA, is amended to read:

**“33-22-174. Opt-out of reference pricing – notification.** (1) A pharmacist or pharmacy in a network plan with a plan sponsor, health insurance issuer, or pharmacy benefit manager providing covered drugs on a reference pricing basis may decline to provide a brand-name drug, multisource generic drug, supply, or service if the reference pricing amount is less than the acquisition cost paid by the pharmacy or pharmacist.

(2) If a pharmacist or pharmacy declines to provide the prescription or service under the conditions in subsection (1), the pharmacy or pharmacist shall attempt to provide the customer with adequate information as to where the prescription for the drug, supply, or service may be filled.

~~(3) (a) The insurance commissioner may investigate and review on a random basis to determine whether a plan sponsor, health insurance issuer, or pharmacy benefit manager has an adequate network of pharmacies or pharmacists, particularly in rural areas, and whether mail-order pharmacies in a network are adequate to serve rural areas if a local pharmacy or pharmacist is unavailable.~~

~~(b) A pharmacy or pharmacist who declines to provide the prescription or service as provided in subsection (2) shall cooperate with any investigation and review of network adequacy.”~~

**Section 17.** Section 33-30-102, MCA, is amended to read:

**“33-30-102. Application of 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: [33-2-714;] 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, parts 13, 19, and 23, *and [sections 1 through 12]*; Title 33, chapter 3, part 6; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 10, 12, 15, 18, 19, 22, and 32, 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. (Bracketed reference in subsection (1) to 33-2-714 terminates June 30, 2025, on occurrence of contingency--sec. 48, Ch. 415, L. 2019.)”

**Section 18.** Section 33-31-111, MCA, is amended to read:

**“33-31-111. 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 Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, parts 7 and 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) *Other chapters and provisions of this title apply to health maintenance organizations as follows:* Title 33, chapter 1, parts 6, 12, and 13;; 33-2-1114;; 33-2-1211; and 33-2-1212;; Title 33, chapter 2, parts 13, 19, and 23, and [sections 1 through 12];; 33-3-401;; 33-3-422;; 33-3-431;; Title 33, chapter 3, part 6;; Title 33, chapter 10;; Title 33, chapter 12;; 33-15-308;; Title 33, chapter 17;; Title 33, chapter 19;; 33-22-107;; 33-22-129;; 33-22-131;; 33-22-136;; ~~33-22-137;~~ 33-22-138; through 33-22-139;; 33-22-141; and 33-22-142;; 33-22-152; and 33-22-153;; 33-22-156 through 33-22-159;; 33-22-180;; 33-22-244;; 33-22-246; and 33-22-247;; 33-22-514; and 33-22-515;; 33-22-521;; 33-22-523; and 33-22-524;; 33-22-526;; and Title 33, chapter 32, apply to health maintenance organizations.”

**Section 19.** Section 33-35-306, MCA, is amended to read:

**“33-35-306. Application of insurance code to arrangements.** (1) In

addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) Title 33, chapter 2, part 23, and [sections 1 through 12];

(e) 33-3-308;

(f) Title 33, chapter 7;

(g) Title 33, chapter 18, except 33-18-242;

- (h) Title 33, chapter 19;
- (i) 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and 33-22-153; and
- (j) 33-22-512, 33-22-515, 33-22-525, and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked.”

**Section 20.** Section 33-38-102, MCA, is amended to read:

“**33-38-102. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) (a) “Administrator” has the meaning provided for in 33-17-102(3).
- (b) *The term includes a pharmacy benefit manager as defined in [section 2].*
- (2) “Enroller” means a person who:
  - (a) solicits the purchase or renewal of a medical care discount card through that person;
  - (b) transmits, for consideration, from a supplier to another person or from another person to a supplier a contract or application for a medical care discount card or the renewal of a medical care discount card; or
  - (c) acts or aids in another manner in the delivery or negotiation of a medical care discount card or the renewal or continuance of a medical care discount card.
- (3) “Health care provider” means:
  - (a) an individual licensed by the department of labor and industry to practice or who holds a temporary permit to practice a branch of the healing arts;
  - (b) a professional corporation organized pursuant to Title 35, chapter 4, by one or more individuals described in subsection (3)(a);
  - (c) a Montana limited liability company organized pursuant to Title 35, chapter 8, for the purpose of rendering professional services by individuals described in subsection (3)(a);
  - (d) a partnership of individuals described in subsection (3)(a);
  - (e) a Montana nonprofit corporation organized pursuant to Title 35, chapter 2, for the purpose of rendering professional health care services by one or more individuals described in subsection (3)(a); or
  - (f) a health care facility as defined in 50-5-101.
- (4) “Health insurance issuer” means a health insurance issuer, as defined in 33-22-140, that is authorized to do business in this state and its affiliates, as defined in 33-2-1101.
- (5) (a) “Medical care discount card” means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount in a medical care-related purchase from a health care provider.
  - (b) The term does not include a pharmacy discount card unless a pharmacy discount benefit is combined with another type of medical care discount.
- (6) “Medical care discount card supplier” means a person engaged in selling or furnishing, either as principal or agent, for consideration, one or more medical care discount cards to another person or persons.
- (7) “Network of health care providers” means two or more health care providers who are contractually obligated to provide services in accordance with the terms and conditions applicable to a medical care discount card.
- (8) “Pharmacy discount card” means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a

discount or access to a discount on one or more prescription drugs, and that is not combined with another type of medical care discount.

(9) "Pharmacy discount card supplier" means a person engaged in selling or furnishing, either as a principal or agent, for consideration, one or more pharmacy discount cards to another person or persons.

(10) "Preferred provider organization company" means a company that contracts with health care providers for lower fees than those customarily charged by the health care provider for services and contracts with health insurance issuers, administrators, or self-insured employers to provide access to those lower fees to a particular group of insureds, subscribers, participants, beneficiaries, members, or claimants.

(11) "Prescription drug provider" means a pharmacy or other business that is contractually bound to provide a discount on one or more prescription drugs in conjunction with the use of a pharmacy discount card.

(12) "Service area" means the area within a 60-mile radius of the home or place of business of a medical care discount card user or pharmacy discount card user."

**Section 21.** Section 39-71-2375, MCA, is amended to read:

**"39-71-2375. Operation of state fund as authorized insurer – issuance of certificate of authority – exceptions – use of calendar year – risk-based capital – reporting requirements.** (1) The state fund provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state and the provisions of Title 39, chapter 71, part 23.

(2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers' compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be continuously renewed by the commissioner.

(b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is provided by other insurers when applying for a certificate of authority under 33-2-115.

(c) The state fund is subject to the reporting requirements under 33-2-705 but is not subject to the tax on net premiums.

(d) *The state fund is subject to the provisions of [sections 1 through 12] if it contracts with one or more pharmacy benefit managers as defined in [section 2].*

(3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers pursuant to 39-71-2313, is not subject to:

(i) formation requirements of an insurer under Title 33, chapter 3;

(ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-2313;

(iii) liquidation or dissolution under Title 33;

(iv) participation in the guaranty association provided for in Title 33, chapter 10;

(v) 33-12-104; or

(vi) any assessment of punitive or exemplary damages.

(b) The state fund is subject to 33-16-1023, except as provided in 39-71-2316(1)(e), (1)(f), and (1)(g).

(4) The state fund shall complete financial reporting and accounting on a calendar year basis.

(5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in 33-2-1902, the commissioner shall issue a report

to the governor, the state fund board of directors, and to the legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the commissioner is reporting on a regulatory action level RBC event, the report must include the state fund's corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders issued by the commissioner.

(b) If the state fund fails to comply with any lawful order of the commissioner, the commissioner may initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If the state fund fails to comply with the commissioner's lawful supervision order under this subsection (5)(b), the commissioner may institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning for rehabilitation based on the grounds provided in 33-2-1321(1) or (2).

(6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-time examiner qualified by education, training, experience, and high professional competence to examine the state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be employees of the commissioner.

(7) For the purposes of this section, the term "guaranteed market" has the definition provided in 39-71-2312."

**Section 22. Transition.** A pharmacy benefit manager that is registered as an administrator under Title 33, chapter 17, part 6, and that is subject to the requirements of [sections 1 through 12] on [the date of passage and approval of this act] shall maintain the registration status under Title 33, chapter 17, part 6, until [the effective date of this act]. On licensure by the commissioner of a pharmacy benefit manager under [sections 1 through 12], the license replaces and supersedes a pharmacy benefit manager's registration under Title 33, chapter 17, part 6.

**Section 23. Codification instruction.** [Sections 1 through 12] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1 through 12].

**Section 24. 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 25. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2022.

(2) [Section 10] and this section are effective on passage and approval.

**Section 26. Termination.** [Section 10(3)] terminates June 1, 2023.

Approved May 12, 2021

## CHAPTER NO. 502

[SB 400]

AN ACT RESTRICTING A GOVERNMENTAL ENTITY'S ABILITY TO INTERFERE WITH FUNDAMENTAL PARENTAL RIGHTS; ESTABLISHING A CAUSE OF ACTION FOR INTERFERENCE WITH PARENTAL RIGHTS; PROVIDING A FILING FEE; AMENDING SECTION 25-1-202, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, the interests and role of parents in the care, custody, and control of their children are both implicit in the concept of ordered liberty and deeply rooted in our nation's history and tradition; and

WHEREAS, the right to parent is among the unalienable rights retained by the people under the Constitution of the United States; and

WHEREAS, the right to parent includes the high duty and right of parents to nurture and direct their children's destiny, including their upbringing, moral or religious training, health care, and education; and

WHEREAS, the State of Montana has independent authority to protect parents' fundamental right to nurture and direct their children's destiny, including their upbringing, moral or religious training, health care, and education; and

WHEREAS, parental rights are as fundamental to the human condition as to be considered inalienable. Termination of parental rights equals or exceeds the detriment of criminal sanctions. Therefore, parents whose parental rights are subject to termination must have the right to fundamental due process in all cases.

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

**Section 1. Interference with fundamental parental rights restricted – cause of action.** (1) A governmental entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children unless the governmental entity demonstrates that the interference:

(a) furthers a compelling governmental interest; and

(b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest.

(2) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

(3) When a parent's fundamental rights protected by this section are violated, a parent may assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against the governmental entity. The prevailing party in an action filed pursuant to this section is entitled to reasonable attorney fees and costs.

(4) As used in this section, "governmental entity" has the meaning provided in 2-9-101.

**Section 2.** Section 25-1-202, MCA, is amended to read:

**"25-1-202. Additional filing fee fees.** (1) In addition to other filing fees, the following fees must be paid to the clerk of the district court at the time of filing a civil action in the district court:

(a) a fee of \$20 ~~must be paid to the clerk of district court at the time of filing a civil action in the district court; and~~

(b) if the action is brought pursuant to [section 1], in addition to the fee required under subsection (1)(a), a fee of \$5.

(2) The fee fees must be forwarded by the clerk to the department of revenue for deposit in the state general fund. The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as proper disbursements."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as a new part in Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [section 1].

**Section 4. Applicability.** [This act] applies to an interference with parental rights existing on or after [the effective date of this act].

Approved May 12, 2021

